



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, August 1, 2003	August 20, 2003
5	Friday, August 15, 2003	September 3, 2003
6	Friday, August 29, 2003	September 17, 2003

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 12, 2003, at 10 a.m. and Wednesday, August 13, 2003, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Customer councils, adopt ch 10, Notice **ARC 2637B**, also Filed Emergency **ARC 2635B** 7/23/03

CAPITAL INVESTMENT BOARD, IOWA[123]

Tax credit for investments in qualifying businesses and community-based seed capital funds;
tax credit for investments in venture capital funds, 2.1 to 2.3, 2.7, 3.1, Notice **ARC 2618B** 7/23/03
Investment tax credits relating to investments in a fund of funds organized
by the Iowa capital investment corporation, adopt ch 4, Notice **ARC 2617B**, also Filed Emergency **ARC 2623B** 7/23/03

CORRECTIONS DEPARTMENT[201]

Sex offender risk assessment—appeal process, 38.3(5), Filed Emergency **ARC 2636B** 7/23/03

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Organization; division responsibilities; Iowa intergovernmental review system;
rural resource coordination programs for fire services; main street linked investments
loan program; housing assessment and action planning program; amend chs 1, 21;
rescind chs 38, 42, 43, 45; amend ch 50; rescind chs 52, 101, 131;
amend ch 163, Filed **ARC 2589B** 7/9/03
Housing fund, ch 25, Notice **ARC 2591B** 7/9/03
Self-employment loan program; targeted small business financial assistance program,
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Community economic betterment program—modernization projects, 53.2, 53.11 to 53.17, Filed **ARC 2590B** 7/9/03
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Cogeneration pilot program, adopt ch 62, Notice **ARC 2593B** 7/9/03
Public records and fair information practices, ch 169, Filed **ARC 2588B** 7/9/03

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Who may initiate complaints, 11.4(1), Filed **ARC 2622B** 7/23/03
Complaints, investigations, contested case hearings—legal representation, 11.21(3), Filed **ARC 2639B** 7/23/03
Correction of licenses, 14.107, Filed **ARC 2624B** 7/23/03
Clarification of names of licenses, 14.110, 14.115 to 14.118, 14.121(5), 14.131, Filed **ARC 2625B** 7/23/03
School psychologist endorsement, 15.3(8), Filed **ARC 2626B** 7/23/03

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Permanent assignment of petroleum products; grant programs for schools, hospitals,
and buildings owned by units of local government, nonprofit organizations
and public care institutions; solar energy and energy conservation bank; state energy
conservation program and energy extension service, rescind chs 4, 7, 8, 16, 17; ch 18 title,
18.1 to 18.3, 18.3(1), 18.3(2), 18.4, 18.5, 18.5(1), 18.5(2); rescind ch 19, Filed **ARC 2596B** 7/9/03

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NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Open burning, 23.2(2), 23.2(3)“a,” “g” and “i,” Notice **ARC 2597B** 7/9/03
Water pollution control—scope of title, definitions, forms, rules of practice;
criteria for award of grants; state revolving fund loans for wastewater
treatment; onsite wastewater treatment system assistance program, chs 90 to 92,
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ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Iowa ethics and campaign disclosure board; codes of conduct,
ch 1; rescind ch 12, Filed **ARC 2585B** 7/9/03
Filing requirements for a permanent organization making a one-time contribution in excess of \$750,
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Campaign disclosure procedures—valid signature, computer-generated reports,
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Notice **ARC 2633B** 7/23/03Contributions from political committees not organized in Iowa, 4.32, Notice **ARC 2603B** 7/9/03Complains, investigation, and resolution procedures; declaratory orders, chs 5, 9,12, Notice **ARC 2632B** 7/23/03Contested case procedures; personal financial disclosure, chs 7, 11, Filed **ARC 2586B** 7/9/03**HUMAN SERVICES DEPARTMENT[441]**

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11.4(4), 11.4(5), 11.4(7), 93.151, 93.151(1), Notice **ARC 2619B** 7/23/03Disputed county billings, adopt ch 15, Filed **ARC 2573B** 7/9/03

Fiscal procedure used to apply credits due counties from a state institution or institutional program,

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Medicaid home- and community-based services (HCBS) waiver for persons with mental retardation,

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home- and community-based mental retardation waiver,

83.61(1)“g”(1), Filed Emergency After Notice **ARC 2574B** 7/9/03

HAWK-I program—elimination of six-month waiting period for children

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COMMERCE DEPARTMENT[181]“umbrella”

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ch 15 div IV, 15.61 to 15.67, ch 15 appendixes II to IV, Filed **ARC 2616B** 7/23/03HMOs—deductibles and coinsurance charges, 40.16, Notice **ARC 2631B** 7/23/03

LAW ENFORCEMENT ACADEMY[501]

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PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Fee increases for renewal and reinstatement of permanent physician licenses,

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NATURAL RESOURCES DEPARTMENT[561]“umbrella”

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106.10(1)“b,” 106.10(6), Filed **ARC 2600B** 7/9/03Block deer hunts, 106.11(4)“a”(7) and (8), Notice **ARC 2599B** 7/9/03**PERSONNEL DEPARTMENT[581]**IPERS, 21.33(4), Filed **ARC 2613B** 7/23/03**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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COMMERCE DEPARTMENT[181]“umbrella”

Alternate energy production, 15.1 to 15.3, 15.6 to 15.16, 20.9(2)“b”(6), Filed **ARC 2621B** 7/23/03Iowa broadband initiative, adopt ch 43, Notice **ARC 2620B** 7/23/03**WORKERS’ COMPENSATION DIVISION[876]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Contested cases, 4.6, Filed **ARC 2615B** 7/23/03Payroll tax tables, 8.8, Filed Emergency **ARC 2634B** 7/23/03

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

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Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Mark Kuhn
2667 240th Street
Charles City, Iowa 50616

Brian Gentry
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Customer councils, ch 10 IAB 7/23/03 ARC 2637B (See also ARC 2635B herein)	Director's Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa	August 13, 2003 11 a.m.
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Housing fund, ch 25 IAB 7/9/03 ARC 2591B	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 1:30 p.m.
Eligibility for targeted small business financial assistance program, 51.1 to 51.7, 55.1 to 55.4 IAB 7/9/03 ARC 2594B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 3 p.m.
Enterprise zones, 59.1 to 59.7, 59.9, 59.10, 59.13, 59.14 IAB 7/9/03 ARC 2592B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 2 to 3 p.m.
Cogeneration pilot program, ch 62 IAB 7/9/03 ARC 2593B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Open burning, 23.2 IAB 7/9/03 ARC 2597B	Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	August 7, 2003 1 p.m.
Water pollution control state revolving fund, chs 90 to 92; 93.1, 93.3, 93.10, 93.12 IAB 7/9/03 ARC 2595B	AEA, Suite 105 824 Flindt Dr. Storm Lake, Iowa	July 30, 2003 7:30 p.m.
	Rooms A and B Third Floor, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	July 31, 2003 7:30 p.m.
	Conference Room 401 SW Seventh St. Des Moines, Iowa	August 4, 2003 1:30 p.m.

INSURANCE DIVISION[191]

HMOs—deductibles and coinsurance charges, 40.16 IAB 7/23/03 ARC 2631B	330 Maple St. Des Moines, Iowa	August 12, 2003 10 a.m.
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LAW ENFORCEMENT ACADEMY[501]

Training of an individual who intends to become certified as a law enforcement officer, 3.12 IAB 7/9/03 ARC 2562B (See also ARC 2561B)	Conference Room Iowa Law Enforcement Academy Camp Dodge Johnston, Iowa	July 29, 2003 10 a.m.
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MANAGEMENT DEPARTMENT[541]

Grants enterprise management system, ch 11 IAB 7/9/03 ARC 2587B (See also ARC 2602B)	Room G14 State Capitol Des Moines, Iowa	August 7, 2003 10 a.m.
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MEDICAL EXAMINERS BOARD[653]

Fees for permanent physician licenses, 8.4(1), 9.11(3), 9.13(1) IAB 7/23/03 ARC 2638B	Suite C 400 SW Eighth St. Des Moines, Iowa	August 12, 2003 3 p.m.
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NATURAL RESOURCE COMMISSION[571]

Addition of Clear Lake State Park, Ritz Unit, to after-hours fishing list, 61.9(4) to 61.9(21) IAB 7/9/03 ARC 2598B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 29, 2003 10 a.m.
Deer hunting—designated block hunt areas, 106.11(4) IAB 7/9/03 ARC 2599B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 31, 2003 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Practice of chiropractic physicians, 43.1, 43.3 to 43.6, 44.3(2) IAB 7/23/03 ARC 2629B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 13, 2003 9 to 11 a.m.
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TRANSPORTATION DEPARTMENT[761]

Signs for county conservation parks, 131.8(1) IAB 7/9/03 ARC 2601B	First Floor South Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	July 31, 2003 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Definition of “eligible customers,” 22.1 IAB 6/25/03 ARC 2549B	Hearing Room 350 Maple St. Des Moines, Iowa	August 12, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 7/23/03 ARC 2620B	Hearing Room 350 Maple St. Des Moines, Iowa	October 21, 2003 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 2637B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 11, the Department of Administrative Services hereby gives Notice of Intended Action to adopt Chapter 10, “Customer Councils,” Iowa Administrative Code.

The proposed chapter is intended to implement the provisions of 2003 Iowa Acts, House File 534, which establishes the Department of Administrative Services and creates customer councils to oversee the provision of services for which the Department is the sole provider. The rules establish three customer councils: general services, human resources, and technology; provide a method of appointing voting and ex-officio members; set the terms of membership; describe the basic organization of the councils; establish the powers and duties of the councils; provide for a customer complaint resolution process; and set forth related Department responsibilities for accepting customer input and creating an annual service listing.

Public comments concerning the proposed rules will be accepted until 3:30 p.m. on August 13, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)242-5974; E-mail Carol.Stratemeyer@dgs.state.ia.us.

There will be a public hearing on August 13, 2003, at 11 a.m. in the Director’s Conference Room, Department of Administrative Services, Hoover State Office Building, Level A, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs may contact the Department of Administrative Services prior to the hearing if accommodations need to be made.

This chapter was also Adopted and Filed Emergency and is published herein as **ARC 2635B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2003 Iowa Acts, House File 534, section 11.

ARC 2618B**CAPITAL INVESTMENT BOARD,
IOWA[123]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby gives Notice of Intended Action to amend Chapter 2, “Tax Credit for Investments in Qualifying Businesses and Community-Based Seed Capital Funds,” and Chapter 3, “Tax Credit for Investments in Venture Capital Funds,” Iowa Administrative Code.

These amendments are proposed because of 2003 Iowa Acts, Senate File 458.

Item 1 amends rule 123—2.1(15E) to provide that an individual taxed on income from a revocable trust can qualify for the tax credit provided for an investment in a qualifying business.

Item 2 amends 123—2.2(15E) by striking the reference to individual investors in the definition of “community-based seed capital fund” and by changing the definition of “investor” to include individuals taxed on income from a revocable trust.

Item 3 amends rule 123—2.3(15E) to provide that an individual receiving income from a revocable trust’s investment in a qualified business may claim the tax credit.

Item 4 amends rule 123—2.7(15E) to provide that where the taxpayer dies prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent’s final income tax return.

Item 5 updates an implementation clause.

Item 6 amends rule 123—3.1(15E) to provide that an investor that makes separate investments into a community-based seed capital fund and a venture capital fund will be entitled to claim a tax credit for both investments.

Item 7 updates an implementation clause.

These amendments are being proposed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

The Board has determined that these proposed amendments may have an impact on small business. The Board has considered the factors listed in Iowa Code section 17A.4A. The Board will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 25, 2003, to the Iowa Capital Investment Board, in care of the

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 22, 2003. Such written comments should be directed to the Iowa Capital Investment Board, in care of the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Board, in care of the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 12, 2003.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, Senate File 458.

The following amendments are proposed.

ITEM 1. Amend rule 123—2.1(15E) as follows:

123—2.1(15E) Tax credit for investments in qualifying businesses and community-based seed capital funds. For tax years beginning on or after January 1, 2002, a taxpayer may claim a tax credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II, for a portion of the taxpayer's equity investment in a qualifying business. For tax years beginning on or after January 1, 2002, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II, business tax on corporations imposed under Iowa Code chapter 422, division III, taxation of financial institutions imposed under Iowa Code chapter 422, division V, insurance companies tax imposed under Iowa Code chapter 432 or taxation of credit unions imposed under Iowa Code section 533.24, for a portion of a taxpayer's equity investment in a community-based seed capital fund. Only natural persons shall be eligible for the investment tax credit provided for an investment in a qualifying business. *A natural person includes an individual taxed on income from a revocable trust.* Natural persons and various types of legal entities including, but not limited to, corporations, limited liability companies, partnerships (both general and limited), trusts and estates shall be eligible for the investment tax credit provided for an investment in a community-based seed capital fund. If the taxpayer that is entitled to an investment tax credit for an investment in a community-based seed capital fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns. An individual shall not separately claim a tax credit for an investment in a qualifying business for any tax credit allocated to such individual by a pass-through entity as described in the immediately preceding sentence.

ITEM 2. Amend rule **123—2.2(15E)**, definitions of "community-based seed capital fund" and "investor," as follows:

"Community-based seed capital fund" means a fund that meets the following criteria:

1. Is organized as a limited partnership or limited liability company;
2. Has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least \$500,000, but not more than \$3 million; and
3. Has no fewer than ten individual investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than 25 percent of the ownership interests outstanding in the fund.

"Investor" means an individual making a cash investment in a qualifying business *or an individual taxed on income from a revocable trust's cash investment in a qualifying business* or a person making a cash investment in a community-based seed capital fund. "Investor" does not include a person who is a current or previous owner, member, partner (limited or general) or shareholder in a qualifying business.

ITEM 3. Amend rule 123—2.3(15E) as follows:

123—2.3(15E) Taxpayers eligible for the investment tax credit. A taxpayer who is a natural person and an investor in a qualifying business or community-based seed capital fund is eligible to apply to the board for an investment tax credit applicable against such taxpayer's personal net income tax liability imposed under Iowa Code chapter 422, division II. *An individual receiving income from a revocable trust's investment in a qualifying business may claim the tax credit against the taxes imposed under Iowa Code chapter 422, division II, for a portion of the revocable trust's equity investment in a qualifying business.* A taxpayer that is a legal entity, such as a corporation, limited liability company, partnership (general or limited), trust or estate, and is an investor in a community-based seed capital fund is eligible to apply to the board for an investment tax credit applicable against such taxpayer's tax liability under the business tax on corporations imposed under Iowa Code chapter 422, division III, the taxation of financial institutions imposed under Iowa Code chapter 422, division V, the insurance companies tax imposed under Iowa Code chapter 432 or the taxation of credit unions imposed under Iowa Code section 533.24. The taxpayer's investment must be made in the form of cash to purchase equity in a qualifying business or community-based seed capital fund.

ITEM 4. Amend rule 123—2.7(15E) as follows:

123—2.7(15E) Claiming the tax credits. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this rule. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. Notwithstanding the foregoing, any tax credit carried over pursuant to rule 123—2.6(15E) and issued for the tax year immediately following the tax year in which the investment was made may be claimed by the taxpayer and credited to the tax-

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

payer's tax liability for the third tax year following the tax year in which the tax credit is issued. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. *In the case of a tax credit allowed under Iowa Code chapter 422, division II, where the taxpayer died prior to redeeming the tax credit, the remaining credit can be redeemed on the decedent's final income tax return.*

ITEM 5. Amend **123—Chapter 2**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 2003 Iowa Acts, *House Senate File 2271-458*.

ITEM 6. Amend rule 123—3.1(15E) as follows:

123—3.1(15E) Tax credit for investments in venture capital funds. For tax years beginning on or after January 1, 2002, a taxpayer may claim a tax credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II, business tax on corporations imposed under Iowa Code chapter 422, division III, taxation of financial institutions imposed under Iowa Code chapter 422, division V, insurance companies tax imposed under Iowa Code chapter 432 or taxation of credit unions imposed under Iowa Code section 533.24, for a portion of a taxpayer's equity investment in a venture capital fund. Natural persons and various types of legal entities, including but not limited to corporations, limited liability companies, partnerships (both general and limited), trusts and estates, shall be eligible for the investment tax credit provided for an investment in a venture capital fund. If the taxpayer that is entitled to an investment tax credit for an investment in a venture capital fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns. A taxpayer shall not claim an investment tax credit for an investment in a venture capital fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65 or an investor that receives a tax credit for ~~an~~ *the same* investment in a community-based seed capital fund as described in Iowa Code section 15E.45. The taxpayer's equity investment must be made in the form of cash to purchase equity in a venture capital fund.

ITEM 7. Amend **123—Chapter 3**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, *Senate File 458*.

ARC 2617B**CAPITAL INVESTMENT BOARD,
IOWA[123]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby gives Notice of Intended Action to adopt Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

These rules are proposed because of 2002 Iowa Acts, chapter 1005.

Proposed Chapter 4 provides for contingent tax credits administered by the Iowa Capital Investment Board relating to investments in one or more funds organized by the Iowa Capital Investment Corporation.

These rules are being proposed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

The Board has determined that these proposed rules may have an impact on small business. The Board has considered the factors listed in Iowa Code section 17A.4A. The Board will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 25, 2003, to the Iowa Capital Investment Board, in care of the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed rules on or before August 22, 2003. Such written comments should be directed to the Iowa Capital Investment Board, in care of the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Board, in care of the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 12, 2003.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 2623B**. The content of that submission is incorporated by reference.

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1005.

ARC 2633B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment reflects current Board policies concerning the permissible uses of campaign funds by candidates as announced in IECDB Advisory Opinions 2000-03, 2000-04, 2000-07, 2000-14, and 2000-16.

The proposed amendment does not contain a specific waiver provision, but any restrictions imposed would be subject to a request for waiver pursuant to 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before August 12, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.41.

The following amendment is proposed.

Amend subrule **4.25(1)**, paragraphs “f,” “i,” “s,” “t,” and “u,” as follows:

f. Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses *for a candidate* to attend a national political party convention are *also permitted* ~~prohibited unless the candidate can substantiate that the sole reason for attending the convention is to enhance the candidacy of the candidate.~~

i. General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. *However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.*

s. Subscriptions to newspapers and periodicals *that circulate within the area represented by the office that a candidate is seeking or holds, that contain information of a general nature about the state of Iowa, or that contain information useful to all candidates such as The Wall Street Journal and Roll Call. Candidates who are unsure whether a subscription is permissible shall seek guidance from the board prior to paying for the subscription with campaign funds.*

t. Membership in service organizations *including a local chamber of commerce.*

u. Repayment of campaign loans made to the committee. *Candidates who make loans to their own committees shall not charge interest on the loans in excess of 5 percent.*

ARC 2632B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to rescind Chapter 5, “Complaint, Investigation, and Resolution Procedure”; to rescind Chapter 9, “Declaratory Orders,” and adopt new Chapter 9, “Complaint, Investigation, and Resolution Procedures”; and to adopt new Chapter 12, “Declaratory Orders,” Iowa Administrative Code.

The proposed amendments incorporate the subject matter of current Chapter 5 in new Chapter 9, and the subject matter of current Chapter 9 in new Chapter 12. Chapter 5 will be temporarily rescinded and reserved. The Board is in the process of placing similar subject matters together by chapter in the Board’s rules. The proposed amendments also reflect current Board policies and procedures.

Some of the rules in the proposed amendments contain specific waivers. All of the Board’s rules are subject to petitions for waiver under 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before August 12, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code chapters 17A and 68B.

The following amendments are proposed.

ITEM 1. Rescind **351—Chapter 5**.

ITEM 2. Rescind 351—Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9 COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES

351—9.1(68B) Complaints.

9.1(1) Form. A complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1).

9.1(2) Board acceptance. A complaint shall not be deemed accepted by the board until completion of the legal review required by Iowa Code section 68B.32B(4). If the board’s legal counsel opines that the complaint contains a legally sufficient allegation, the complaint is deemed accepted. If the board’s legal counsel opines that the complaint does not contain a legally sufficient allegation and the board, upon re-

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view, makes a determination that the complaint does contain a legally sufficient allegation, the complaint is then deemed accepted. If both the board's legal counsel and the board opine that the complaint does not contain a legally sufficient allegation, the complaint shall be dismissed.

9.1(3) Notice. Notice to the subject of a complaint is made only when a complaint is accepted, subject to the conditions of Iowa Code section 68B.32B(3). A complaint is a public record, subject to the conditions of Iowa Code section 68B.32B(11).

9.1(4) Board review. The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

9.1(5) Information provided to board. The board may, on its own motion and without the filing of a complaint, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. As provided in Iowa Code section 68B.32B(7), persons may provide information to the board for possible board-initiated investigation instead of filing a complaint.

351—9.2(68B) Investigations—board action.

9.2(1) Referral to staff. Upon a determination that a complaint contains a legally sufficient allegation, the board shall refer the complaint to staff for investigation.

9.2(2) Board-initiated investigation. On its own motion the board may refer to staff for investigation matters that the board believes may be subject to the board's jurisdiction, including matters brought to the board's attention by members of the public.

9.2(3) Subpoenas. Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, and other real evidence, as well as requiring the attendance and testimony of witnesses.

9.2(4) Completion. Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

9.2(5) Board action. Upon receipt and review of the staff investigative report and any recommendations, the board may:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Dismiss the matter without a determination regarding probable cause as an exercise of administrative discretion;
- d. Make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter as provided in subrule 9.4(2); or
- e. Make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding.

351—9.3(68B) Grounds for disciplinary action. The board may impose discipline against a person subject to the board's jurisdiction who commits a violation of Iowa Code chapter 56 or 68B or rules adopted under either chapter.

351—9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters.

9.4(1) Action after hearing. If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the actions set out in Iowa Code section 68B.32D.

9.4(2) Administrative resolution. Violations may be handled by administrative resolution rather than through the full investigative and contested case proceeding process. The board may order administrative resolution by directing that

the person take specified remedial action. The board may also order administrative resolution by issuing a letter of reprimand.

9.4(3) Response to administrative resolution. A person subject to board discipline may accept administrative resolution, but is not required to do so. If the person accepts the administrative resolution by complying with the directed remedial action or accepting a letter of reprimand, the matter shall be closed. If the person wishes to appeal the administrative resolution, the person shall make a written request for a contested case proceeding and shall submit the request within 30 days of the date of the correspondence informing the person of the board's decision.

9.4(4) Statement of charges. The board shall issue a statement of charges upon timely receipt of a request for a contested case proceeding to appeal the administrative resolution. The contested case shall be conducted in accordance with the provisions in 351—Chapter 11. The board's legal counsel shall have the burden of proving the violation. Failure to challenge the administrative resolution through a request for a contested case proceeding is a failure to exhaust administrative remedies for purposes of seeking judicial review.

9.4(5) Automatic civil penalties. The board may administratively resolve late-filed campaign finance disclosure reports, late-filed personal financial disclosure statements, and late-filed executive branch lobbyist and client reports by the assessment of automatic civil penalties, subject to an appeal process, as set out by board rule.

9.4(6) Admonishment. The board may admonish any person who it believes has committed a minor violation to exercise care. An admonishment is not discipline and is not subject to a contested case proceeding appeal.

351—9.5(68B) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the board's legal counsel and any person subject to the investigation or contested case proceeding. A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

These rules are intended to implement Iowa Code section 68B.32B.

ITEM 3. Adopt new 351—Chapter 12 as follows:

CHAPTER 12 DECLARATORY ORDERS

351—12.1(17A,68B) Petition for declaratory order.

12.1(1) Who may file. Any person may file a petition with the board for a declaratory order concerning the applicability of any statute, rule, policy, decision, or order within the primary jurisdiction of the board.

12.1(2) Place of filing. A petition for a declaratory order shall be filed with the board at 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. A petition may also be filed by fax at (515)281-3701. A copy of the petition and any supporting documents shall be filed with any party of record to the declaratory order proceeding.

12.1(3) Petition deemed filed. A petition is deemed filed when it is received by the board. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

12.1(4) Form of petition. The petition shall be typewritten or legibly handwritten in ink and shall provide the following information:

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- a. A statement that the document is a petition for a declaratory order.
- b. A clear and concise statement of all relevant facts on which the order is requested.
- c. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
- d. The questions petitioner wants answered, stated clearly and concisely.
- e. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- f. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- g. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided, are pending determination, or are under investigation by any governmental entity.
- h. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
- i. Any request by petitioner for a meeting provided for by rule 351—12.6(17A,68B).
- j. The name, mailing address, and telephone number of the petitioner and petitioner's representative if there is a representative.
- k. A statement indicating the person to whom communications concerning the petition should be directed.

12.1(5) Signature. The petition shall be dated and signed by the petitioner or the petitioner's representative.

351—12.2(17A,68B) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition. The board may request a brief from the petitioner or from any other person concerning the questions raised in the petition. A requested brief shall be filed within ten days of receipt of notice from the board.

351—12.3(17A,68B) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The board may also give notice to any other persons.

351—12.4(17A,68B) Intervention.

12.4(1) Who may intervene. Persons who qualify under any applicable provision of law and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

12.4(2) Board discretion. A person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene at the discretion of the board.

12.4(3) Place of filing. A petition for intervention shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The petition may also be filed by fax at (515)281-3701. The board shall provide the intervenor with a file-stamped copy of the petition for intervention if the intervenor provides an extra copy for this purpose. The intervenor shall also file a copy of the petition for intervention and any supporting documents with the person who filed the petition for a declaratory order.

12.4(4) Form of petition. The petition for intervention shall be typewritten or legibly handwritten in ink and shall provide the following information:

- a. A statement that the document is a petition for intervention and a reference to the original petition for a declaratory order.
- b. Facts supporting the intervenor's standing and qualifications for intervention.
- c. The answers urged by the intervenor to the questions presented and a summary of the reasons urged in support of those answers.
- d. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
- e. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided, are pending determination, or are under investigation by any governmental entity.
- f. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the proceeding.
- g. Whether the intervenor consents to be bound by the determination of the matters presented in the proceeding.
- h. The name, mailing address, and telephone number of the intervenor and the intervenor's representative if there is a representative.
- i. A statement indicating the person to whom communications concerning the petition for intervention should be directed.

351—12.5(17A,68B) Inquiries. Inquiries concerning the status of a petition for a declaratory order may be made to the board at 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309.

351—12.6(17A,68B) Board consideration. Upon request by petitioner in the petition for a declaratory order, the board shall schedule a brief and informal meeting between the petitioner, all intervenors, and the board's executive director or legal counsel to discuss the petition. The board may solicit comments from any person on the questions presented in the petition. Any person may submit comments to the board on the questions raised in the petition.

351—12.7(17A,68B) Action on petition.

12.7(1) Time. Within 30 days after the filing of the petition, or 5 days following a regular meeting of the board in which the petition has been received and discussed, whichever comes earlier, the board shall issue an order on the petition, set the matter for specified proceedings, agree to issue a declaratory order by a specified time, or decline to issue the order and state the reasons for doing so. If the board does not issue a declaratory order within 60 days after the receipt of a petition for a declaratory order, the petition is deemed denied. The parties may agree to extend the deadlines in this subrule.

12.7(2) Date of issuance. The board is deemed to have issued an order or to have refused to do so on the date the order or refusal is mailed or delivered to the parties of record.

351—12.8(17A,68B) Refusal to issue order.

12.8(1) For good cause. The board shall refuse to issue a declaratory order for good cause. Good cause includes, but is not limited to, the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

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c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case proceeding, or other agency or judicial proceeding that may resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

12.8(2) Rationale. A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition. Once the board declines to issue a declaratory order, or if the petition is deemed denied because an order was not entered within 60 days, a party to the proceeding may either seek judicial review or await further board action with respect to its petition.

12.8(3) Amended filing. Refusal to issue a declaratory order does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.

351—12.9(17A,68B) Contents of declaratory order. In addition to the order itself, a declaratory order must contain the date of issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

351—12.10(17A,68B) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

351—12.11(17A,68B) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. The order is binding on the board, the petitioner, and any intervenors who consented to be bound. An order is applicable only in circumstances when the relevant facts and the laws, rules, policies, decisions, or orders involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition for a declaratory order. A declaratory order is in effect on the date of issuance.

351—12.12(17A,68B) Advisory opinion. In lieu of filing a petition for a declaratory order, any person subject to the board's jurisdiction may request an advisory opinion pursuant to rule 351—1.2(68B). However, as provided in 351—subrule 1.3(6), the board will refuse to issue a declaratory order to a person who has previously received a board opinion

on the same question unless the petitioner demonstrates a significant change in circumstances from those in the board opinion.

These rules are intended to implement Iowa Code chapters 17A and 68B.

ARC 2619B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 217.34, 234.6, and 239B.4(4), the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” Chapter 11, “Overpayments,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

These amendments:

- Change the procedure for initiating collection of an overpayment in the PROMISE JOBS Program from a notice hand-issued by the PROMISE JOBS worker to an automated notice issued by the Department of Inspections and Appeals, based on worker entries to the Overpayment Recovery System. Separate notice formats are specified depending on whether the overpayment resulted from a client error, a provider error, or an agency error.

- Incorporate procedures for collecting overpayments in the HAWK-I Program.

- Reflect the reorganization of the responsibility for debt collection through offset of state tax refunds and payments from the Department of Revenue and Finance to the new Department of Administrative Services.

These amendments do not provide for waivers in specified situations because all participants should be subject to the same recoupment procedures. Individuals may request a waiver of these rules under the Department's general rule at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before August 13, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 239B.14 and 514I.1 and section 217.34 as amended by 2003 Iowa Acts, House File 534, section 209.

The following amendments are proposed.

ITEM 1. Amend rule 441—7.5(17A) as follows:

Amend subrule **7.5(6)**, introductory paragraph and paragraphs “a” and “b,” as follows:

7.5(6) Appeals of family investment program (FIP), and refugee cash assistance (RCA), and *PROMISE JOBS* overpayments.

a. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a FIP, or RCA, or *PROMISE JOBS* overpayment

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begins when the department sends the first *notice informing the person of the overpayment*. The notice shall be sent on:

1. Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance; or ;
2. Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance, ~~informing the person of the FIP or RCA overpayment~~ ;
3. Form 470-3990, Demand Letter for PROMISE JOBS Agency Error Overissuance;
4. Form 470-3991, Demand Letter for PROMISE JOBS Client Error Overissuance; or
5. Form 470-3992, Demand Letter for PROMISE JOBS Provider Error Overissuance.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent ~~Demand Letter for FIP/RCA Agency Error Overissuance or Demand Letter for FIP/RCA Client Error Overissuance~~. *notice as identified in paragraph "a."*

Amend subrule 7.5(7) as follows:

7.5(7) Appeals of Medicaid, and state supplementary assistance (SSA), and HAWK-I program overpayments.

a. A *Subject to the time limits described in subrule 7.5(4)*, a person's right to appeal the existence and amount of a Medicaid, or SSA, or HAWK-I program overpayment begins when the department sends the first *notice informing the person of the overpayment*. The notice shall be sent on:

1. Form 470-2891, Notice of Overpayment, Demand Letter for the Medicaid or State Supplementary Assistance Overpayment, ~~informing the person of the Medicaid or SSA overpayment~~, and is subject to the time limits described in subrule 7.5(4). ; or
2. Form 470-3984, Demand Letter for HAWK-I Overpayment.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent ~~Notice of Overpayment, Demand Letter for the Medicaid or State Supplementary Assistance Overpayment~~. *notice as identified in paragraph "a."*

ITEM 2. Amend subrule 7.7(1), introductory paragraph, as follows:

7.7(1) Notification. Whenever the department proposes to cancel, reduce, or suspend assistance or services or to revoke a license, certification, approval, registration, or accreditation, it shall give timely and adequate notice of the pending action, except when a service is deleted from the state's comprehensive annual service plan in the social services block grant program at the onset of a new program year or as provided in subrule 7.7(2). For the purpose of this subrule, "assistance" includes food stamps, Medicaid, the family investment program, refugee cash assistance, child care assistance, diversion, emergency assistance, family or community self-sufficiency grant, PROMISE JOBS assistance, and state supplementary assistance, and HAWK-I program.

ITEM 3. Amend rules ~~441—11.1(217,421)~~ to ~~441—11.4(217,421)~~, parenthetical implementations, as follows:

~~(217,421)~~

ITEM 4. Amend rule ~~441—11.1(217,421)~~, definitions of "current," "public assistance," and "repayment agreement," as follows:

"Current" shall mean that amount which is due and owing within the previous 12 months from the date of submission to the department of ~~revenue and finance administrative services~~ or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less

than 12 months, ~~prior to~~ *before* the date of submission to the department of ~~revenue and finance administrative services~~.

"Public assistance" shall mean family investment program, food stamps, ~~medical assistance~~ *Medicaid*, state ~~supplemental supplementary~~ assistance, PROMISE JOBS, child care assistance, and refugee cash assistance, and HAWK-I program.

"Repayment agreement" shall mean an agreement entered into voluntarily between the department and the debtor for the repayment of overpayments. Agreements shall be made on:

1. Form 470-0495, Repayment Contract; ;
2. Form 470-0338, Demand Letter for Food Stamp Agency Error Overissuance; ;
3. Form 470-3486, Demand Letter for Food Stamp Intentional Program Violation Overissuance; ;
4. Form 470-3487, Demand Letter for Food Stamp Inadvertent Household Error Overissuance; ;
5. Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance; ;
6. Form 470-3489, Demand Letter for FIP/RCA Intentional Program Violation Overissuance; ;
7. Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance; ;
8. Form 470-3990, Demand Letter for PROMISE JOBS Agency Error Overissuance;
9. Form 470-3991, Demand Letter for PROMISE JOBS Client Error Overissuance;
10. Form 470-3992, Demand Letter for PROMISE JOBS Provider Error Overissuance;
11. Form 470-2891, Demand Letter for Medicaid or State Supplementary Assistance Overpayment; ;
12. Form 470-3627, Demand Letter for Child Care Assistance Provider Error Overissuance; or ;
13. Form 470-3628, Demand Letter for Child Care Assistance Client Error Benefit Overissuance; ; or
14. Form 470-3984, Demand Letter for HAWK-I Overpayment.

ITEM 5. Amend rule 441—11.4(217,421) as follows:

Amend subrule 11.4(2) as follows:

11.4(2) Frequency of submission. The department shall submit to the department of ~~revenue and finance administrative services~~ on or about the first working day of the month a list of those debtors who have an ~~overpayment(s)~~ *overpayment* meeting the criteria in subrule 11.4(1).

Amend subrule **11.4(3)**, paragraph "a," as follows:

a. The department is notified by the department of ~~revenue and finance administrative services~~ that the debtor is entitled to a state income tax refund, rebate, or other state payment;

Amend subrule 11.4(4), introductory paragraph, as follows:

11.4(4) Method for division of joint payments. When either spouse wishes to request a division of a jointly or commonly owned right to payment, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, the spouse's proportionate share of a jointly or commonly owned right to payment, as determined by the department of ~~revenue and finance administrative services~~, shall be released by the department of ~~revenue and finance administrative services~~ unless:

Amend subrule **11.4(5)**, first unnumbered paragraph, as follows:

If the department is upheld in the final decision, the setoff process shall continue and the refund, rebate, or other state

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payment shall be applied to the appropriate delinquent overpayments. If the department is reversed in the final decision, the debtor's refund, rebate, or other state payment shall be released to the debtor by the department of revenue and finance administrative services.

Amend subrule 11.4(7), introductory paragraph, as follows:

11.4(7) Application of setoff. The department shall apply any setoff received from the department of revenue and finance administrative services as a result of this rule to the debtor's overpayments as indicated on the written notification mailed to the debtor and in accordance with rule 441—11.3(217,421).

ITEM 6. Amend **441—Chapter 11**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections ~~section 217.34 and 421.17, subsection 21 as amended by 2003 Iowa Acts, House File 534, section 209.~~

ITEM 7. Amend rule 441—93.151(239B) as follows:

Amend the introductory paragraph as follows:

441—93.151(239B) Recovery of PROMISE JOBS expense allowances. When a participant or a provider receives an expense allowance for transportation or other supportive expenses which are greater than allowed under these rules or a duplicate payment of these expense allowances, an overpayment is considered to have occurred and recovery is required. There are two categories of PROMISE JOBS expense allowances subject to recovery: (1) transportation and (2) other supportive expense allowances.

The PROMISE JOBS worker shall notify the department of inspections and appeals (DIA) to record the overpayment in the Overpayment Recovery System at the same time that the client or provider is notified of the overpayment. The outstanding balance of any overpayments which occurred prior to before July 1, 1990, shall be treated in the same manner.

A PROMISE JOBS overpayment shall be recovered through repayment in part or in full or through offsetting against future payments in the same category. Underpayments and overpayments may be offset against each other in correcting incorrect payments in the same category. Repayments received by the PROMISE JOBS unit and information about recoveries made through offsetting shall be transmitted to the Department of Human Services, Cashier's Office, Room 14, 1305 East Walnut Street, Des Moines, Iowa 50319-0144.

Amend subrule 93.151(1), introductory paragraph, as follows:

93.151(1) The PROMISE JOBS worker department of inspections and appeals shall promptly notify the client or the provider of when it is determined that an overpayment exists, as described at 441—subrule 7.5(6). Notification shall include the amount, date, and causes of reason for the overpayment, the date the overpayment was received, and appeal rights using the Notice of Overpayment—PROMISE JOBS Expense Allowances, Form 470-2666. The client or provider has 30 days to appeal the Notice of Overpayment—PROMISE JOBS Expense Allowances. However, the existence and amount of the overpayment must be appealed within 30 days of the issuance of the Notice of Overpayment—PROMISE JOBS Expense Allowances. Upon the client's request, the local office shall provide additional information regarding the computation of the overpayment. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—subrule 7.5(6). If a client or provider

files an appeal request, the PROMISE JOBS unit shall notify DIA within three working days of receipt of the appeal request.

ARC 2614B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services proposes to rescind Chapter 39, “Mental Illness Special Services Fund,” Iowa Administrative Code.

The state appropriation for the mental illness special services fund was discontinued after state fiscal year 2001, so these rules are no longer needed. Since 1990, funds had been appropriated to match federal grants for construction and start-up costs to develop community facilities for homeless people who have a mental illness.

This amendment does not provide for waivers in specified situations because there are no longer funds available for construction and start-up costs to develop community living arrangements for people who are homeless and have a mental illness.

Any interested person may make written comments on the proposed amendment on or before August 13, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code chapter 225C.

The following amendment is proposed.

Rescind and reserve **441—Chapter 39**.

ARC 2631B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8 and 514B.23, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 40, “Health Maintenance Organizations,” Iowa Administrative Code.

This amendment rescinds the rule setting limits for deductibles and coinsurance charges on health care services as a percentage of the total annual premium. The Division has

INSURANCE DIVISION[191](cont'd)

determined that the rule is no longer applicable in the current environment of health maintenance organizations and is outdated.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on Tuesday, August 12, 2003. The Division is located at 330 Maple Street, Des Moines, Iowa 50319.

Any person who intends to attend the public hearing and requires special accommodations should contact the Division at (515)281-5705.

Any interested person may make written comments on the proposed amendment on or before 12 noon on August 12, 2003. Written comments may be sent to Susan E. Voss, 1st Deputy Insurance Commissioner, at the address listed above. Comments may also be submitted electronically to susan.voss@iid.state.ia.us.

This amendment is intended to implement Iowa Code chapter 514B.

The following amendment is proposed.

Rescind and reserve rule **191—40.16(514B)**.

ARC 2638B**MEDICAL EXAMINERS
BOARD[653]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby proposes to amend Chapter 8, “Fees,” and Chapter 9, “Permanent Physician Licensure,” Iowa Administrative Code.

The Board approved the proposed amendments to Chapters 8 and 9 during a telephone conference call on July 1, 2003.

The proposed amendments will raise the licensure fees for renewal and reinstatement of permanent physician licenses. Physicians who renew their permanent licenses via an on-line application will continue to pay less than those who submit paper applications. The fee increase is needed for the Board to generate sufficient revenue to cover its expenses, as required by law.

The fee changes will increase the Board’s revenue less than \$100,000.

Any interested person may present written comments on these proposed amendments not later than 4 p.m. on August 12, 2003. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; E-mail ann.mowery@ibme.state.ia.us.

There will be a public hearing on August 12, 2003, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners’ office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 147.80.

The following amendments are proposed.

ITEM 1. Amend subrule **8.4(1)**, paragraphs “c” and “g,” as follows:

c. Renewal of an active license to practice, \$325 \$350 if renewal is made via paper application or \$300 \$312.50 if renewal is made via on-line application, per biennial period or prorated portion thereof if the current license was issued for a period of less than 24 months.

g. Reinstatement of a license within one year of becoming inactive, the renewal fee for the most recent license period plus a \$175 reinstatement penalty. The renewal fee is \$325 \$350 except when the license in the most recent license period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician’s month and year of birth.

ITEM 2. Amend subrule **9.11(3)**, paragraph “a,” as follows:

a. The renewal fee is \$325 \$350 if the renewal is made via paper application or \$300 \$312.50 if the renewal is made via on-line application.

ITEM 3. Amend subrule **9.13(1)**, paragraph “a,” as follows:

a. Fees for reinstatement within one year of the license’s becoming inactive. The fee shall include the renewal for the most recent license period plus a \$175 reinstatement penalty. The renewal fee is \$325 \$350 except when the license in the most recent period had been granted for less than 24 months; in that case, the renewal fee is prorated according to the date of issuance and the physician’s month and year of birth.

ARC 2628B**PROFESSIONAL LICENSURE
DIVISION[645]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby amends the Notice of Intended Action to rescind Chapter 42, “Schools for Chiropractic Physicians,” and adopt new Chapter 42, “Colleges for Chiropractic Physicians,” Iowa Administrative Code.

Notice of Intended Action was published in the April 16, 2003, Iowa Administrative Bulletin as **ARC 2413B**. Upon review of the proposed amendment, the assistant attorney general suggested revising the language of the proposed rules to clarify the requirements outlined in the chapter. The Board is noticing this proposed language in order to receive further comment. The proposed amendment rescinds the current rules covering chiropractic colleges and adopts new rules for these colleges.

Persons may present their views in writing by submitting their comments to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail ebaird@idph.state.ia.us. The public comment period stated in the original Notice of Intended Action has been extended to August 13, 2003.

This amendment is intended to implement Iowa Code chapter 151.

The following amendment is proposed.

Rescind 645—Chapter 42 and adopt the following **new** chapter in lieu thereof:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

CHAPTER 42
COLLEGES FOR CHIROPRACTIC PHYSICIANS

645—42.1(151) Definitions. For the purposes of these rules, the following definitions shall apply:

“Chiropractic intern” means a chiropractic student of an approved college of chiropractic in the student’s last academic quarter, semester, or trimester of study, who is eligible for graduation from the college of chiropractic and is eligible to complete a preceptorship program, as authorized by these rules.

“Chiropractic preceptor” means a chiropractic physician licensed and practicing in Iowa pursuant to Iowa Code chapter 151, who accepts a chiropractic intern or resident into the practice for the purpose of providing the chiropractic student with a clinical experience of the practice of chiropractic, and who meets the requirements of these rules.

“Chiropractic resident” means a graduate chiropractic physician who has received a doctor of chiropractic degree from a college of chiropractic approved by the board, and who is not licensed in any state, but who is practicing under a chiropractic preceptorship authorized under these rules.

“Chiropractic student” means a student of an approved college of chiropractic.

“Council on Chiropractic Education” or “CCE” means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from the Council on Chiropractic Education (CCE). CCE’s address and Web site may be obtained from the board’s Web site at <http://www.idph.state.ia.us/licensure>.

“Preceptorship practice” means the chiropractic practice of a single chiropractic physician or group of chiropractic physicians in a particular business or clinic, into which a licensed practicing chiropractic physician has accepted a chiropractic intern or chiropractic resident for the limited purpose of providing the intern or resident with a clinical experience in the practice of chiropractic.

645—42.2(151) Board-approved chiropractic colleges.

42.2(1) Approval of a chiropractic college may be granted if the program submits proof to the board of chiropractic examiners that the chiropractic program meets the following requirements:

a. The chiropractic college is accredited by the Commission on Accreditation of the Council on Chiropractic Education (CCE), as recognized by the U.S. Secretary of Education.

b. The core curriculum shall meet the requirements of the CCE standards and in addition shall:

(1) Cover a period of four academic years totaling not less than 4,000 60-minute hours in actual resident attendance;

(2) Comprise a supervised course of study, including practical clinical instruction, in all of the subjects specified in Iowa Code section 151.1(3); and

(3) Include a minimum of 120 classroom hours of physiotherapy coursework with a practical application, effective July 1, 2004.

c. The chiropractic college publishes in a regularly issued catalog the requirements for graduation and degrees that are required by the board of chiropractic examiners.

d. Transcripts shall include entries for all completed coursework.

42.2(2) Through July 1, 2004, conditional approval may be given to a college if:

a. The college is not accredited by the CCE but meets all other requirements for approval in rule 645—42.2(151), except for the physiotherapy component of subparagraph 42.2(1)“b”(3); and

b. The college has a written agreement with a current board-approved chiropractic college to allow students to obtain physiotherapy coursework as transfer credit. The physiotherapy coursework shall meet the same standards as the coursework offered for the board-approved chiropractic college’s own students. The students’ transcripts must reflect completion of the coursework as transfer credit.

645—42.3(151) Practice by chiropractic interns and chiropractic residents. A student enrolled in a board-approved chiropractic preceptorship program in the state of Iowa may treat patients without obtaining an Iowa license, provided the requirements of these rules are met.

645—42.4(151) Approved chiropractic preceptorship program. The board shall approve a chiropractic college’s preceptorship program if the program meets the following requirements:

42.4(1) The preceptorship program meets current CCE standards for consumer protection.

42.4(2) The preceptorship program is an established component of the curriculum offered by a board-approved chiropractic college.

42.4(3) Chiropractic interns who participate in the preceptorship program have met all requirements for graduation from the chiropractic college except for completion of the preceptorship period.

42.4(4) Chiropractic residents who participate in the post-graduate preceptorship program have graduated from a chiropractic college approved by the board.

42.4(5) All chiropractic physicians who serve as preceptors shall be approved under rule 645—42.5(151).

42.4(6) The chiropractic college retains ultimate responsibility for student learning and evaluations during the preceptorship.

42.4(7) The chiropractic preceptor shall supervise no more than one chiropractic intern or one chiropractic resident for the duration of a given preceptorship period.

42.4(8) If a preceptor agreement must be canceled for any reason, it is the responsibility of the chiropractic college to assign the intern or resident to another preceptor and notify the Iowa board of chiropractic examiners of the preceptorship cancellation. The notice shall include reasons for cancellation of the preceptorship.

645—42.5(151) Approved chiropractic physician preceptors.

42.5(1) The board shall approve a chiropractic physician to be a chiropractic physician preceptor if the chiropractic physician meets the following criteria:

a. The chiropractic physician holds a current Iowa chiropractic license and has continuously held licensure in the United States for the previous five years prior to preceptorship;

b. The chiropractic physician is currently fully credentialed by the sponsoring chiropractic college and approved by the board; and

c. The chiropractic physician has not had any formal disciplinary action or been a party to a malpractice settlement or judgment within the past three years.

The preceptor shall supervise no more than one chiropractic intern or one chiropractic resident for the duration of the preceptorship period.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

42.5(2) The role of the chiropractic physician preceptor shall include:

a. Supervising responsibility for the practice of the chiropractic intern or chiropractic resident who is accepted into a preceptorship practice.

b. Identifying the chiropractic intern or chiropractic resident to the patients of the preceptorship practice to ensure that no patient will misconstrue the status of the intern or resident. The intern or resident shall wear a badge identifying that person as an intern or resident at all times in the presence of preceptorship patients.

c. Exercising direct, on-premises supervision of the chiropractic intern or chiropractic resident at all times that the intern or resident is engaged in any facet of patient care in the chiropractic physician preceptor's clinic.

d. Directing the chiropractic intern or chiropractic resident only in treatment care that is within the educational background and experience of the preceptor.

e. Notifying the preceptorship program within 30 days of either of the following actions:

(1) If the preceptor has any formal disciplinary action taken by any licensing entity; or

(2) If the preceptor is a party to any malpractice settlement or judgment.

645—42.6(151) Termination of preceptorship. A preceptorship shall terminate upon the occurrence of one of the following events:

42.6(1) Interns. The intern graduates from a board-approved college of chiropractic.

42.6(2) Residents. Twelve months have passed since the resident graduated from a board-approved college of chiropractic.

42.6(3) Formal disciplinary action is taken against the preceptor or the preceptor is a party to a final malpractice judgment or settlement agreement.

These rules are intended to implement Iowa Code chapter 151.

ARC 2629B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 43, "Practice of Chiropractic Physicians," and Chapter 44, "Continuing Education for Chiropractic Physicians," Iowa Administrative Code.

The proposed amendments adopt definitions for "acupuncture" and "practice of acupuncture" pursuant to Iowa Code chapter 148E and rescind definitions for "peer review" and "peer review committee" because the definitions pertaining to this subject are located in rule 645—40.1(17A). The rules covering chiropractic insurance consultants and acupuncture are revised and updated, and the rule for nonprofit

nutritional product sales is rescinded because the rule is outdated.

Interested persons may make written comments on the proposed amendments no later than August 13, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail ebaird@idph.state.ia.us.

A public hearing will be held on August 13, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 151.

The following amendments are proposed.

ITEM 1. Amend rule **645—43.1(151)** by rescinding definitions for "peer review" and "peer review committee," and adopting the following **new** definitions in alphabetical order:

"Acupuncture," pursuant to Iowa Code section 148E.1, means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Practice of acupuncture," pursuant to Iowa Code section 148E.1, means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

ITEM 2. Amend subrule 43.3(1) as follows:

43.3(1) The board shall establish utilization and cost control review (U.C.C.R.) committee(s). The name(s) of the committee(s) *committee members* shall be on file with the board and available to the public. The designation of the committee(s) *committee members* shall be reviewed annually.

ITEM 3. Amend subrule **43.3(2)**, paragraph "a," as follows:

a. Hold a current license *in Iowa*.

ITEM 4. Rescind rules 645—43.4(151) and 645—43.5(151) and adopt the following **new** rules in lieu thereof:

645—43.4(151) Chiropractic insurance consultant.

43.4(1) A chiropractic insurance consultant advises insurance companies of Iowa standards of (a) recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules and (b) the propriety of chiropractic diagnosis and care.

43.4(2) All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, shall notify the board annually that they are engaged in those activities and of the location where those activities are performed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

43.4(3) Licensed chiropractic physicians shall not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

- a. Hold a current license in Iowa.
- b. Have practiced chiropractic in the state of Iowa during the immediately preceding five years.
- c. Are actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant. Active practice includes but is not limited to maintaining an office location and providing clinical care to patients.

645—43.5(151) Acupuncture. A chiropractic physician who engages in the practice of acupuncture shall maintain documentation that shows the chiropractic physician has successfully completed the education and examination requirements required by the board and shall make such documentation available to the board upon request. Requirements include:

1. Completion of 100 clock hours of classroom instruction; and
2. Completion of the certification examination given by a board-approved continuing education sponsor for acupuncture.

ITEM 5. Rescind and reserve rule **645—43.6(151)**.

ITEM 6. Amend subrule **44.3(2)** by relettering paragraphs “c” to “e” as paragraphs “d” to “f” and adopting the following **new** paragraph “c”:

- c. A minimum of 12 hours of continuing education in the field of acupuncture. This requirement is applicable only if the chiropractic physician is engaged in the practice of acupuncture.

ARC 2640B

SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 47.1, 50.11 and 52.41, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Alternative Voting Systems,” Iowa Administrative Code.

Items 1 and 5 are intended to implement Iowa Code sections 50.11 and 52.41, which require the State Commissioner of Elections (Secretary of State) to promulgate rules regarding the electronic transmission of election results and to adopt standards for examination and testing of devices for the electronic transmission of election results. Items 2 and 4 update rule 721—22.1(52) and subrule 22.5(3) to conform to an earlier amendment to rule 721—22.2(52), incorporating new voting system standards into these rules. Item 3 simply corrects subrule 22.3(3) to reflect the current mailing address of the Secretary of State’s office.

Any interested person may make written suggestions or comments on these proposed amendments through August 12, 2003. Such written suggestions or comments should be directed to Sandra J. Steinbach, Director of Elections, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515) 281-5823 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

Requests for a public hearing must be received by 4:30 p.m. on August 11, 2003.

These amendments are intended to implement Iowa Code sections 50.11 and 52.41.

The following amendments are proposed.

ITEM 1. Amend rule **721—22.1(52)** by adding the following **new** definition in alphabetical order:

“Electronic transmission” means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

ITEM 2. Amend rule **721—22.1(52)**, definition of “qualification test,” as follows:

“Qualification test” means the examination and testing of an electronic voting system by an independent test authority using ~~Performance and Test Standards for Punchcard, Marksense, and Director Recording Electronic Systems, as adopted by the Federal Election Commission January 25, 1990, and as amended April 1990, the voting system standards required by rule 721—22.2(52)~~ to determine if *whether* the system complies with those standards.

ITEM 3. Amend subrule 22.3(3) as follows:

22.3(3) Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, ~~Second Floor, Hoover Building, Lucas State Office Building, 321 E. 12th Street~~, Des Moines, Iowa 50319.

ITEM 4. Amend subrule 22.5(3) as follows:

22.5(3) Report of an accredited independent test authority certifying that the system is in compliance with the ~~Federal Election Commission’s Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Systems~~ *voting systems standards required by rule 721—22.2(52)*. Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, *members of the board of examiners*, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked “CONFIDENTIAL” and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

ITEM 5. Adopt the following **new** rule:

721—22.30(50,52) Electronic transmission of election results.

22.30(1) Certification of equipment. On or after October 22, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before October 22, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

SECRETARY OF STATE[721](cont'd)

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report concludes that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

22.30(2) Procedures on election day. The election results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

22.30(3) Procedures after election day. Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for July is 5.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 6.0%
74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in

the community. This statement is available for examination by citizens.

New official state interest rates, effective July 10, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.70%
32-89 days	Minimum 0.70%
90-179 days	Minimum 0.60%
180-364 days	Minimum 0.60%
One year to 397 days	Minimum 0.70%
More than 397 days	Minimum 1.00%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

August 1, 2002 — August 31, 2002	7.00%
September 1, 2002 — September 30, 2002	6.75%
October 1, 2002 — October 31, 2002	6.25%
November 1, 2002 — November 30, 2002	5.75%
December 1, 2002 — December 31, 2002	6.00%
January 1, 2003 — January 31, 2003	6.00%
February 1, 2003 — February 28, 2003	6.00%
March 1, 2003 — March 31, 2003	6.00%
April 1, 2003 — April 30, 2003	6.00%
May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%

ARC 2620B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4 and 476.2 and 2003 Iowa Acts, Senate File 368, section 6, the Utilities Board (Board) gives notice that on July 3, 2003, the Board issued an order in Docket No. RMU-03-9, Iowa Broadband Initiative, "Order Commencing Rule Making," to receive public comment on proposed Chapter 43 relating to the availability of advanced telecommunications services throughout Iowa.

These rules are intended to implement a new statute, 2003 Iowa Acts, Senate File 368, which became effective on July

UTILITIES DIVISION[199](cont'd)

1, 2003. Entitled "Iowa Broadband Initiative," the new statute allows rate-regulated local exchange carriers to implement an increase in monthly rates for residential or business dial tone access service lines by an amount not to exceed \$2 per month per line. The revenue from this increase is to be used to provide advanced telecommunications services in areas where advanced telecommunications services are not currently available at affordable rates in all or a substantial part of the carrier's local exchanges.

A rate-regulated local exchange carrier electing to participate in the broadband initiative is directed to file a proposed plan for the use of the revenue resulting from the price adjustment. The statute provides the Board with the authority to adopt rules to implement its review process, including rules that specify the initial plan filing requirements; further defines the public interest; and identifies some of the factors that the Board will consider in reviewing plans.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before October 3, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed rules will be held at 10 a.m. on Tuesday, October 21, 2003, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These rules are intended to implement Iowa Code section 476.2 and 2003 Iowa Acts, Senate File 368, section 6.

The following new chapter is proposed.

CHAPTER 43

IOWA BROADBAND INITIATIVE

199—43.1(476) Authority and purpose. These rules are intended to implement Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, relating to the Iowa broadband initiative.

The purpose of these rules is to provide guidelines for rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative and to evaluate the appropriateness of each carrier's broadband initiative revenue plan.

199—43.2(476) Definitions. The following words and terms, when used in this chapter, shall have the meanings shown below:

"Advanced telecommunications services" means the telecommunications infrastructure capable of delivering a data transmission speed of at least 200 kilobits per second in both directions.

"Affordable rates" is presumed to mean the current price for advanced telecommunications services being charged for similar services in areas with multiple broadband providers, as demonstrated by published or advertised prices. However, this presumption may be rebutted in appropriate circumstances.

"Plan" encompasses 24 consecutive months of projects for the deployment of advanced telecommunications services.

"Project" means individual or logically grouped proposals for the deployment of advanced telecommunications services.

"Public interest" includes, but is not limited to, the effective deployment, at the lowest reasonable expenditure of broadband initiative revenues, of advanced telecommunications services to the public at affordable rates and the fostering of economic development through the increased availability of advanced telecommunications services.

199—43.3(476) Applicability. Rate-regulated telecommunications carriers electing to participate in the Iowa broadband initiative shall file for the board's review and approval a proposed plan for using the revenue each carrier will receive from the price increase permitted by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6. The plan shall include economically achievable projects designed to expand advanced telecommunications services into areas of the state where advanced telecommunications services are currently unavailable. Each plan shall cover a time period not to exceed 24 months.

199—43.4(476) Procedures. The following procedures shall govern the board's review of broadband initiative plans:

43.4(1) Written notice of a broadband initiative plan. Prior to filing its initial broadband initiative plan but not more than 62 days prior to filing, a carrier shall mail or deliver a written notice of its filing to all affected customers. The notice shall be submitted to the board for approval not less than 30 days prior to the proposed notification of customers. The notice shall, at a minimum, include the following elements:

a. The actual monthly price increase proposed to be implemented pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, and the proposed implementation date.

b. A statement that the carrier will be filing a broadband initiative plan with the board pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

c. A brief description of the proposed broadband initiative plan and the estimated cost of the proposed plan.

d. A brief description of the board's review process.

e. The telephone numbers and addresses of carrier personnel, the board, and the consumer advocate for customers to contact with questions.

f. A statement describing the application of a credit, in an amount equal to the amount of the proposed residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs.

43.4(2) Approving, rejecting, or docketing. The board shall issue an order approving, rejecting, or docketing a broadband initiative plan no later than 90 days after the plan is filed with the board. Supporting testimony, exhibits, and work papers shall be filed with each carrier's application for approval of a broadband initiative plan.

43.4(3) Price increases pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6. A carrier may implement a price increase for selected classes of customers. The price increase for any particular class of residential or business customers shall be a uniform increase across the Iowa service territory unless otherwise ordered by the board. A carrier electing to participate in the broadband initiative shall file a revised tariff with the board that reflects the proposed price increase for residential or

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business customers allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

43.4(4) Interim approval. While the proposed plan is under review, the board may grant interim approval to specific projects included in the proposed plan. Projects to be considered for interim approval may include, but are not limited to, the deployment of advanced telecommunications services into areas where advanced telecommunications services are unavailable in any part of the carrier's local exchanges.

43.4(5) Modification of a plan. The consumer advocate, the carrier, or a third-party intervenor may propose approval, modification, or rejection of a carrier's plan at any time. The board, on its own motion, may consider modification of a carrier's plan. All applications to modify a plan shall be filed in the same docket in which the original plan was filed. The board shall issue an order docketing, approving, or rejecting a proposed modification within 30 days of the date the proposed modification is filed. If the board rejects or modifies a carrier's plan, the board may require the carrier to file a modified plan and may specify the minimum acceptable contents of the modified plan.

a. Reasons for modifying or rejecting a plan may include, but are not limited to, the following:

(1) A demonstration that advanced telecommunications services are already available at affordable rates in a substantial portion of the area(s) where the services are proposed to be deployed;

(2) A demonstration that significant investment by a third party has been committed for the deployment of advanced telecommunications services in one or more of the areas specified in the plan, and advanced telecommunications services will be offered in those areas within a reasonable time; or

(3) A demonstration that the deployment of advanced telecommunications services in one or more of the areas specified in the plan may no longer be cost-effective.

b. The carrier shall file an application to modify its plan if any one of the following conditions occurs or is projected to occur during the life of the plan:

(1) The total plan budget has changed or will change by a factor of plus or minus 5 percent.

(2) An approved project is proposed to be eliminated or a new project is proposed to be added.

199—43.5(476) Broadband initiative plan requirements.

A carrier's proposed plan shall include individual projects spanning 24 consecutive months from the date the plan is filed and shall include an overall plan for extending advanced services to all customers to the extent consistent with technological limitations and the public interest. Each project description shall include the means by which the carrier proposes to provide advanced telecommunications services to customers who currently cannot be offered such services as well as an estimate of the number of potential customers who may benefit as a result of the project. The plan shall also include a description of how the public interest will be met by the plan and a description of the geographic locations where the improvements are proposed. The plan shall include a ranking of projects, or group of projects, depicting the order and areas in which a carrier proposes to deploy advanced telecommunications services.

The plan shall also include a statement whereby the carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from the implementation of the plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the

service or facility was financed by the revenues generated by the rate increase allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

43.5(1) Description of each proposed project. The description of each proposed project shall include but not be limited to:

- a. The name of the proposed project;
- b. The exchange(s) or area(s), the total number of access lines in the exchange(s) or area(s), and the number of unserved access lines that the project targets;
- c. The proposed improvements and related costs for the project;
- d. The calculation of the total investment divided by the number of additional access lines to be served;
- e. The anticipated date(s) for the deployment of advanced telecommunications services to the exchanges specified in the project; and
- f. A narrative description of the company's reasons for proposing each particular project at the proposed priority level.

43.5(2) Plan and project budget categories. The plan and project budgets shall be itemized by proposed costs. Each category shall contain sufficient information to allow the board to perform an adequate analysis of the plan. The plan and project budgets shall be categorized as follows for each proposed project:

- a. Planning and design costs;
- b. Equipment costs;
- c. Costs for the installation of the equipment; and
- d. Other project and plan costs.

43.5(3) Board review of proposed projects. In reviewing the proposed projects, the board shall consider all relevant factors, including but not limited to the following:

a. Cost efficiency of deployment, which is the calculation of the total investment divided by the number of additional access lines to be served.

b. The extent to which the carrier's proposed investments and expenditures serve the public interest, including the upgrading of existing telecommunications infrastructure to permit improved data services for customers who cannot be offered advanced telecommunications services due to their geographic locations.

c. The availability of external funding sources and committed investments by outside sources.

The board may approve, reject, or modify the plan. For example, the board may reorganize the project priority list or deny approval of specific projects that fail to meet the public interest test.

199—43.6(476) Upon completion of approved plan.

43.6(1) At the end of the 24-month period of an approved plan, a carrier shall file a final reconciliation report. The reconciliation report shall include total revenues collected, total costs incurred, access lines developed, utilization of service, and pricing of services.

43.6(2) Immediately upon completion of the plan and the filing of a reconciliation report, a carrier shall do one or more of the following:

a. File a continuation plan for board review and approval for the continued use of the revenue resulting from the price increase allowed by Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, for further deployment of advanced telecommunications services.

b. File a rate of return rate proceeding pursuant to Iowa Code section 476.6 to determine new rates.

c. File proposed tariffs for board review and approval to reduce the monthly prices that were adjusted pursuant to

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Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6, by an amount equal to the increase.

d. File a refund plan. If, after the completion of the plan, a carrier elects no longer to participate in the broadband initiative, the carrier shall refund all unspent revenues, plus interest, to customers in a manner to be approved by the board.

199—43.7(17A) Confidentiality. A carrier's proposed broadband initiative plan shall not be held as confidential. Supporting information describing the availability of advanced telecommunications services not funded by this initiative may be held confidential pursuant to rule 199—1.9(476). The board may request additional information from a carrier during the board's review of a plan. If the board requests additional information from a carrier, the carrier shall supply the information upon the board's request. The additional information requested may be subject to confidential treatment in accordance with rule 199—1.9(476), although plan updates, revisions, and final plans will not be granted confidential treatment.

199—43.8(476) Project reports.

43.8(1) A carrier shall file a project report with the board 12 months following the board's approval of a broadband ini-

tiative plan, interim projects, or tariff for rate increase, whichever comes first, and every 12 months thereafter until a final reconciliation report is filed.

43.8(2) The project report shall include the following information:

a. A statement detailing the carrier's progress toward completion of its approved plan;

b. A statement identifying the amount of money collected pursuant to Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6;

c. A statement identifying the carrier's expenditures for each approved project;

d. A statement identifying the total number of access lines in the exchange(s) specified in the plan and the access lines made available for advanced telecommunications services; and

e. A narrative statement of the reasons any particular project was not completed as described, proposed, or approved.

These rules are intended to implement Iowa Code section 476.97 as amended by 2003 Iowa Acts, Senate File 368, section 6.

ARC 2635B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 11, the Department of Administrative Services hereby adopts Chapter 10, "Customer Councils," Iowa Administrative Code.

This chapter is intended to implement the provisions of 2003 Iowa Acts, House File 534, which establishes the Department of Administrative Services and creates customer councils to oversee the provision of services for which the Department is the sole provider. The rules establish three customer councils: general services, human resources, and technology; provide a method of appointing voting and ex-officio members; set the terms of membership; describe the basic organization of the councils; establish the powers and duties of the councils; provide for a customer complaint resolution process; and set forth related Department responsibilities for accepting customer input and creating an annual service listing.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need for rules to implement the provisions of 2003 Iowa Acts, House File 534, relating to customer councils. These rules provide a method for customers to oversee services provided by the Department from its inception.

The Department also finds, pursuant to Iowa Code 17A.5(2)"b"(2), that the normal effective date of the new chapter should be waived and this chapter should be made effective on July 1, 2003, as it confers a benefit on customers of the new Department of Administrative Services.

This chapter is also published herein under Notice of Intended Action as **ARC 2637B** to allow public comment.

These rules are intended to implement 2003 Iowa Acts, House File 534, section 11.

These rules became effective July 1, 2003.

The following **new** chapter is adopted.

CHAPTER 10
CUSTOMER COUNCILS**11—10.1(80GA,HF534) Definitions.**

"Customer council" means a group responsible for overseeing operations with regard to a service funded by a governmental entity or subdivision receiving the service when the department of administrative services (DAS) has determined that DAS shall be the sole provider of that service.

"Department" means the department of administrative services (DAS) created by 2003 Iowa Acts, House File 534, section 2.

"Economies of scale" means mass purchasing of goods or services, which results in lower average costs.

"Large agency" means a state agency with more than 700 employees.

"Leadership function" means a service provided by the department and funded by a general appropriation. Leadership functions typically relate to development of policy and standards and are appropriate when standardization is required and the ultimate customer is the taxpayer.

"Marketplace service" means a service that the department is authorized to provide, but which governmental enti-

ties may provide on their own or obtain from another provider of the service.

"Medium-sized agency" means a state agency with 70 to 700 employees.

"Quorum" means a majority of voting members are present.

"Small agency" means a state agency with fewer than 70 employees.

"Utility" means a service funded by the governmental entity receiving the service and for which DAS is the sole provider of the service.

11—10.2(80GA,HF534) Purpose. The purpose of this chapter is to establish DAS customer councils to oversee operations with regard to services provided when the department has determined that DAS shall be the sole provider of a service and to ensure that the department meets the needs of affected governmental entities and subdivisions and those citizens served.

11—10.3(80GA,HF534) Utility determination. Services for which the department has determined that DAS shall be the sole provider are designated "utilities" as part of entrepreneurial management in Iowa state government. Customers may choose the amount of service they purchase, but must buy from the single source. Utilities are those services for which a monopoly structure makes sense due to economies of scale. The process for determining whether the department shall be the sole provider of a service shall include consideration of economic factors, input from customer councils and input from upper levels of the executive branch.

11—10.4(80GA,HF534) Customer councils established. In order to ensure that utility services provide effective and efficient quality service that benefits governmental entities and the citizens they serve, this chapter establishes the following customer councils: general services, human resources, and technology.

11—10.5(80GA,HF534) Customer council membership. DAS customer council membership shall consist of nine state agency representatives, a judicial branch representative overseeing DAS services provided to the judicial branch, a legislative branch representative overseeing DAS services provided to the legislative branch, a representative from the public, a representative from a union representing state employees, and nonvoting ex-officio members.

10.5(1) Method of appointment of members.

a. Executive branch agency representation. Each customer council will include three members from large agencies, three members from medium-sized agencies and three members from small agencies. The designation of an agency to provide a representative to fill a position on a customer council shall be based on a vote of members of the respective large, medium-sized, or small agency groups. This designation shall be reviewed by the agencies prior to June 1 of each year for the terms ending June 30 of that year. The department will periodically review the definition of large, medium-sized and small agencies based on the number of employees of the agencies in Iowa state government and make adjustments accordingly. The individual selected by an agency to become a customer council member shall be the individual the agency determines is most appropriate to provide guidance.

b. Legislative and judicial branch representation. If the service to be provided may also be provided to the judicial branch and legislative branch, then the chief justice of the supreme court and the legislative council may, in their discre-

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tion, each appoint a member to the applicable customer council.

c. Additional members. A member of the public and a member of a union representing state employees involved in providing services overseen by the council shall be selected by voting members of each customer council by their second meeting after July 1, 2003. These selections shall be reviewed by the other council members prior to June 1 of the year the term expires.

d. Ex-officio member(s). Ex-officio members shall not vote on the proceedings of the customer councils for which they have been selected, but shall provide input to the council based on their area of expertise. Each ex-officio member shall be approved by a majority of the voting members of the respective customer council. An ex-officio member may be recommended to the customer council by:

(1) A group representing agencies using a service overseen by the council, and

(2) Any other group approved by the customer council.

10.5(2) Membership changes. As utility services and customer groups change, customer councils may add members to provide for equitable representation.

10.5(3) Term of membership. Each member will serve a two-year term; however, to ensure continuity of council functions, the first term for one representative of a large agency, one representative of a medium-sized agency, and two representatives of small agencies will be a 12-month term. The agencies filling the initial 12-month terms shall be selected by a vote of the agencies in each respective size group. Initial membership terms shall begin on July 1, 2003.

11—10.6(80GA,HF534) Organization of customer council. The operations of the customer councils shall be governed by a set of bylaws as adopted by each council. Bylaws shall address the following issues.

10.6(1) Member participation. Each member is expected to attend and actively participate in meetings. Participation will include requesting input and support from the group each member represents. Substitutes for members absent from meetings will not be allowed; however, members may attend by telephone or other electronic means.

10.6(2) Voting. A quorum is required for a customer council vote.

a. Members who are present shall be eligible to vote on all issues brought before the group for a vote. Members may vote during a meeting by telephone or other electronic means.

b. Each member, other than the ex-officio members, has one vote. A simple majority of the members voting shall determine the outcome of the issue being voted upon.

c. Customer council bylaws may be amended by a simple majority vote of all members.

10.6(3) Officers. Officers shall be elected at the first meeting after July 1 each year by a simple majority of the voting members present and may be removed by a simple majority of the voting members present. The elected officers of each customer council shall be the chairperson and vice chairperson.

10.6(4) Duties of officers.

a. The chairperson shall preside at all meetings of the customer council.

b. The vice chairperson shall assist the chairperson in the discharge of the chairperson's duties as requested and, in the absence or inability of the chairperson to act, shall perform the chairperson's duties.

10.6(5) Committees.

a. The chairperson may authorize or dissolve committees as necessary to meet the needs of a customer council.

b. Members of a customer council and individuals who are not members of a customer council may be appointed by the chairperson to serve on committees.

c. Committees shall provide feedback to the chairperson and the customer council at the council's request.

d. Committees shall meet, discuss, study and resolve assigned issues as needed.

10.6(6) Administration. DAS shall provide staff support to assist the chairperson with the following administrative functions:

a. Keeping the official current and complete books and records of the decisions, members, actions and obligations of the customer councils;

b. Coordinating meeting notices and locations, keeping a record of names and addresses, including E-mail addresses, of the members of the customer councils; and

c. Taking notes at the meetings and producing minutes that will be distributed to all members.

Customer council books and records are subject to the open records law as specified in Iowa Code chapter 22.

10.6(7) Meetings. Customer council meetings are subject to the open meetings law as specified in Iowa Code chapter 21. Customer councils are responsible for the following:

a. Determining the frequency and time of their meetings.

b. Soliciting agenda items from the members in advance of an upcoming meeting.

c. Sending electronic notice of meetings, including date, time and location of the meeting, at least one week prior to the meeting date.

d. Providing an agenda, including those items requiring action, prior to the meeting. The agenda should also include any information necessary for discussion at the upcoming meeting.

e. Conducting meetings using the most recent version of Robert's Rules of Order, revised.

11—10.7(80GA,HF534) Powers and duties of customer council.

10.7(1) Approval of business plans. The customer council shall, on an annual basis, review and recommend action on business plans submitted by the department for performance of the services the customer council oversees. Business plans shall include levels of service, service options, investment plans, and other information.

10.7(2) Complaint resolution. The customer council shall approve the procedure for resolution of complaints concerning the service provided. The procedure shall consist, at a minimum, of the following steps:

a. Informal. An initial informal step is provided for DAS customer service delivery issues only. The customer may, orally or in writing, inform the person responsible for providing the service of the complaint. If the issue is resolved at this point, no further action is required.

b. First level. If the customer is not satisfied with the decision of the DAS service contact at the initial informal step for a service delivery complaint or the complaint is about rates, billing, service level agreements, or some other issue, the customer may submit a written summary of the complaint to the DAS measurement and planning division (MAP). MAP will review and log the complaint and forward it to appropriate DAS management staff. DAS shall send the customer a written decision within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

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c. Second level. If the customer is not satisfied with the decision made on the complaint at level one, MAP will forward the complaint to the appropriate DAS customer council to make a recommendation for the DAS director. MAP shall send the director's written decision to the customer within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

d. Third level. If the customer is not satisfied with the decision made on the complaint at level two, MAP will forward the complaint to the director of the department of management for final disposition. The director of DAS shall send the written decision of the director of the department of management to all affected parties within five business days, unless additional research is required, in which case the decision shall be communicated within ten business days.

10.7(3) Rate setting. The customer council shall approve the procedure for setting rates for the services that the customer council oversees and the resulting rates. Rates shall be established no later than September 1 of the year preceding the rate change.

10.7(4) Biennial review. Every two years the appropriate customer council shall review the decision made by the department that DAS be the sole provider of a service and make recommendations regarding that decision.

11—10.8(80GA,HF534) Customer input. The department shall establish procedures to provide for the acceptance of input from affected governmental entities. Input may take various forms, such as unsolicited comments, response to structured surveys, or an annual report on service requirements.

11—10.9(80GA,HF534) Annual service listing. The department shall annually prepare a listing separately identifying services determined by the department to be leadership functions, marketplace services, and utilities. The listing shall be completed no later than September 1 of the fiscal year preceding the proposed effective date of the change.

These rules are intended to implement 2003 Iowa Acts, House File 534, section 11.

[Filed Emergency 6/27/03, effective 7/1/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2623B

CAPITAL INVESTMENT BOARD, IOWA[123]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

These rules are adopted because of 2002 Iowa Acts, chapter 1005.

Chapter 4 provides for contingent tax credits administered by the Iowa Capital Investment Board relating to investments in one or more fund of funds organized by the Iowa Capital Investment Corporation.

These rules are being filed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to

an Administrative Services Agreement between the Department and the Board.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are impracticable because of the need to implement the new provisions of this law.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing with the Administrative Rules Coordinator on July 3, 2003. The Iowa Capital Investment Corporation and the fund of funds managers plan to issue the securities in the near future, and these rules will benefit investors that want to purchase those securities.

The Iowa Capital Investment Board adopted these rules on June 25, 2003.

These rules are also published herein under Notice of Intended Action as **ARC 2617B** to allow public comment. This emergency filing permits the Board to implement this new provision of law.

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1005.

These rules became effective July 3, 2003.

The following new chapter is adopted.

CHAPTER 4

INVESTMENT TAX CREDITS RELATING TO INVESTMENTS IN A FUND OF FUNDS ORGANIZED BY THE IOWA CAPITAL INVESTMENT CORPORATION

123—4.1(15E) Contingent tax credits relating to investments in Iowa fund of funds. Contingent tax credits are available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation in accordance with Iowa Code section 15E.65. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board. If the tax credit certificates are redeemed, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; taxation of insurance companies imposed under Iowa Code chapter 432; or taxation of credit unions imposed under Iowa Code section 533.24.

123—4.2(15E) Definitions. The following definitions are applicable to this chapter:

"Act" means Iowa Code sections 15E.61 through 15E.69.

"Actual return" means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by all designated investors in such fund of funds (or class of equity interests in such fund of funds), and any transferees of such designated investors, including amounts received as returns of invested capital, returns on invested capital and amounts received in excess of invested capital in whatever form received.

"Board" means the Iowa capital investment board created under Iowa Code section 15E.63.

"Certificate" or "tax credit certificate" means a document constituting a contract between the state of Iowa and a holder and evidencing a tax credit that has been issued and, subject to the contingencies described on the certificate, that may become available to the holder.

"Certificate register" means the register to be maintained by the department recording the name, address, and taxpayer

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identification number of each holder and the maximum potential amount of the tax credits represented by each certificate issued to each holder.

“Closing” means a time when a designated investor contributes cash to the capital of a fund of funds.

“Contingencies” shall mean the conditions under which a tax credit may be claimed and shall include and be limited to each of the following:

1. The condition that the tax credits may only be used to the extent that the actual return with respect to the applicable fund of funds (or class of equity interests in such fund of funds) is less than the applicable scheduled return, and then only to the extent such tax credit becomes a verified tax credit;

2. The condition that the percentage of the total verified tax credits represented by such certificate that first may be claimed during any redemption year will be limited to the percentage verified by the board to the department;

3. The condition that no amount of the tax credit may be claimed prior to the redemption date for the applicable fund of funds; and

4. The condition that receipt by the designated investors in the applicable fund of funds (or class of equity interests in such fund of funds) of an actual return equal to the scheduled return will result in the cancellation of the tax credit certificate.

“Day” means any weekday Monday through Friday that is not a legal holiday in the state of Iowa.

“Department” means the Iowa department of revenue.

“Designated investor” means a natural person or an entity, other than the Iowa capital investment corporation or the revolving fund, that contributes capital to a fund of funds, and such person’s successors and assignees.

“Fiscal year” means the fiscal year for the state of Iowa.

“Fund of funds” means any private, for-profit limited partnership or limited liability company established by the revolving fund to which a designated investor makes a capital contribution.

“Holder” means a holder of a tax credit certificate, either as a designated investor or as a transferee of a designated investor, as reflected on the certificate register.

“Investment amount” means the amount of cash contributed by a designated investor to a fund of funds at a closing.

“Iowa capital investment corporation” means the private, nonprofit corporation created pursuant to Iowa Code section 15E.64.

“Percentage of return” means the percentage represented by the quotient of (1) the actual return for all designated investors in a fund of funds (or class of equity interests in such fund of funds) divided by (2) the scheduled return for such designated investors.

“Portfolio entity” means a venture capital fund or direct investment entity in which a fund of funds makes an investment.

“Redemption date” means a specific calendar year date on which a fund of funds is scheduled to have liquidated its interest in all portfolio entities and to have made the final distribution of the proceeds thereof to designated investors in accordance with the limited partnership agreement or operating agreement of such fund of funds and these rules, provided that in no event shall the redemption date be a date less than five years from the last closing for such fund of funds.

“Redemption year” means each calendar year for which verified tax credits related to a fund of funds may be utilized to reduce tax liabilities. The first redemption year for a fund of funds shall be the calendar year of the redemption date.

“Revolving fund” means the private, for-profit limited partnership established by the Iowa capital investment corporation as a revolving fund of funds pursuant to Iowa Code section 15E.65.

“Scheduled return” means the scheduled rates of return or the scheduled redemptions of equity interests (including returns of and returns on investment) for all designated investors in a fund of funds (or class of equity interests in such fund of funds) determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds and as specified by any rules relating to such fund of funds.

“Tax credit” means a contingent tax credit authorized pursuant to Iowa Code section 15E.66 that is available against tax liabilities up to the amount stated on the certificate for such tax credit, which amount may not exceed the amount by which the scheduled return exceeds the actual return.

“Tax liabilities” means those tax liabilities identified in rule 123—4.1(15E).

“Verified tax credits” means tax credits that have been verified by the board to the department and to the holder of the certificate that represents such tax credits.

123—4.3(15E) Report of the Iowa capital investment corporation. No less than 30 days prior to each closing, the Iowa capital investment corporation shall deliver a written report to the board and to the department containing the following information:

1. A copy of the certificate of limited partnership or articles of organization of the revolving fund and the fund of funds for which the closing is scheduled, certified by the Iowa secretary of state;

2. A summary of the terms of the anticipated investments in such fund of funds as contained in the limited partnership agreement or the operating agreement of the fund of funds.

No less than two days prior to each closing, the Iowa capital investment corporation shall deliver to the board a signed statement of an officer of the Iowa capital investment corporation stating the names, addresses and taxpayer identification numbers of the persons expected to be designated investors at the closing, the total amount of the capital contributions expected to be received at the closing, the maximum amount of tax credits to be represented by each certificate to be issued at the closing, the date of the anticipated closing, and the redemption date for the fund of funds.

123—4.4(15E) Allocation and issuance of certificates. Certificates shall be issued only by the board and only with respect to an actual cash capital contribution to a fund of funds by a designated investor, and not merely with respect to a commitment by a designated investor to make such a capital contribution.

The Iowa capital investment corporation shall certify to the board the investment amount for each designated investor in each closing and the maximum amount of tax credits that may become available by reason of such investment amount (subject to all contingencies), and the board shall issue a certificate to each such designated investor. The maximum amount of tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds. The board shall not issue certificates if, in the aggregate, the maximum amount of tax credits represented by all issued and uncanceled certificates at any time would exceed \$100 million (less the aggregate amount of any tax credits that have

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been used to reduce tax liabilities) calculated in accordance with Iowa Code section 15E.66.

A tax credit certificate shall contain each of the following:

1. The name, address, and tax identification number of the holder;
2. The investment amount associated with that certificate and (if applicable) the class of interests issued to the designated investor that has contributed such investment amount;
3. All of the contingencies applicable to the tax credits;
4. The date of issue of the certificate;
5. The maximum amount of the tax credit represented by the certificate;
6. The redemption date of the certificate;
7. The calculation formula for determining the scheduled return;
8. The calculation formula for determining the amount of the tax credit that may be used to reduce tax liabilities;
9. If the certificate is issued upon a transfer after the redemption date for the related fund of funds, the amount of the verified tax credits represented by such certificate and the redemption year(s) for which they may be used to reduce tax liabilities; and
10. A statement that, although the certificate is not considered a security pursuant to Iowa Code chapter 502, the certificate does constitute a security as such term is defined in Iowa Code section 554.8102(1)“o” solely for purposes of the creation, perfection, priority and enforcement of security interests.

123—4.5(15E) Procedures for verification of tax credits.

4.5(1) Within 10 days after the redemption date for a fund of funds, the Iowa capital investment corporation shall certify to the board the percentage of return for the designated investors in such fund of funds (or for a class of designated investors in such fund of funds). If the percentage of return is less than 100 percent, the Iowa capital investment corporation shall certify the resulting total amount of tax credits per dollar of investment amount to be verified for use by holders of certificates related to such fund of funds (or to a class of equity interests in such fund of funds) in accordance with the terms of the limited partnership agreement or the operating agreement of the fund of funds. The Iowa capital investment corporation shall give notice of such percentage of return and such amount of tax credits per dollar of investment amount to each holder of a certificate related to such fund of funds at the holder's address as it appears on the certificate register.

4.5(2) Within 30 days after the certification of the Iowa capital investment corporation to the board of the percentage of return for a fund of funds (or for a class of equity interests in such fund of funds), the board shall establish and verify the percentage of tax credits related to that fund of funds (or a class of equity interests in such fund of funds) that may be initially used in each redemption year so that each of the following tests will be satisfied:

- a. No more than \$20 million in tax credits, in the aggregate, may become useable to reduce tax liabilities in any fiscal year (provided that such \$20 million limitation shall not limit the carryforward of tax credits otherwise authorized by the Act or these rules);
- b. One hundred percent of each holder's tax credits relating to such fund of funds shall become available to reduce tax liabilities starting with the first redemption year for that fund of funds and expiring no later than the end of the fourth fiscal year after the first redemption year for that fund of funds; and

c. Tax credits shall become verified tax credits for each holder of a certificate related to a fund of funds pro rata with all other holders of certificates related to such fund of funds.

4.5(3) The board shall issue to each holder a verification setting forth for each certificate held by such holder (a) the amount of verified tax credits represented by such certificate (if any) and (b) the amount of verified tax credits represented by such certificate that may first become useable to reduce tax liabilities in any redemption year (if any).

EXAMPLE: The redemption date for a hypothetical fund of funds is August 31, 2010, and an aggregate of \$30 million in tax credits related to that hypothetical fund of funds shall become verified tax credits, of which an aggregate of \$20 million may be used to reduce tax liabilities in the fiscal year July 1, 2010, through June 30, 2011, and an aggregate of \$10 million may be used to reduce tax liabilities in the fiscal year July 1, 2011, through June 30, 2012. There are three holders of certificates with respect to such fund of funds: Holder A is entitled to an aggregate of \$15 million of tax credits and Holders B and C are each entitled to an aggregate of \$7.5 million in tax credits. Holder A is a calendar year taxpayer. Holder B's tax year for state income tax purposes ends November 30, and Holder C's tax year for state income tax purposes ends May 31. These holders may use the verified tax credits to reduce tax liabilities as follows:

Holder	Holder's Tax Year End for Which Tax Credits May Be Used	Amount of Tax Credits that Holder May Use to Reduce Tax Liabilities for Such Year	Corresponding State Fiscal Year Ending
A	12/31/10	\$10 million	6/30/11
A	12/31/11	\$5 million	6/30/12
B	11/30/10	\$5 million	6/30/11
B	11/30/11	\$2.5 million	6/30/12
C	5/31/11	\$5 million	6/30/11
C	5/31/12	\$2.5 million	6/30/12

123—4.6(15E) Contractual nature of certificates; irrevocability of tax credits. Upon the contribution by a designated investor of an investment amount to the capital of a fund of funds, the entitlement of a holder to use the tax credits represented by the certificate associated with such investment amount shall be final and permanent, subject only to the contingencies, and such entitlement shall not be subject to any further condition, reduction, modification, amendment, change, or revocation.

The entitlement of a holder to claim tax credits represented by a certificate shall be in the nature of a contract between the state of Iowa on the one hand and such holder and the holder's successors and assignees on the other hand which shall not be subject to modification, amendment, change or rescission without prior written consent of the holder as of the date of any such purported action. No such modification, amendment, change or rescission to which a holder may have agreed shall be binding upon any of the successors or assignees of such holder unless it is stated in the text of the certificate issued to such successor or assignee.

The entitlement of a holder to claim tax credits represented by a certificate shall not be affected in any way by:

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1. Action or inaction of the holder or designated investor following payment of the investment amount associated with such certificate;

2. The transfer by the designated investor of all or any portion of the designated investor's interest in a fund of funds;

3. The determination after the date of initial issuance of such certificate that a fund of funds was not organized or did not make its investments in accordance with the requirements of the Act or these rules;

4. The invalidity or illegality for any reason of the existence or functions of the board, the revolving fund, a fund of funds or the Iowa capital investment corporation or the investments made by a fund of funds or one or more of the portfolio entities;

5. The bankruptcy, insolvency, reorganization, merger, consolidation, dissolution or liquidation of the board, the revolving fund, any fund of funds, the Iowa capital investment corporation or any portfolio entity for any reason; or

6. The level, timing, or degree of success of any fund of funds or any portfolio entities, or the extent to which venture capital funds that are portfolio entities are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objective.

If the legal existence of the board, the revolving fund, a fund of funds, the Iowa capital investment corporation or the department is ended or some or all of their respective functions are transferred to another entity at any time prior to the full use of 100 percent of the tax credits that could potentially be represented by all of the certificates, the board shall adopt such rules as may be necessary to ensure the continuity and effectiveness of the entitlement of each holder to use the tax credits represented by such holder's certificate.

Once the investment amount has been paid by a designated investor, a certificate shall be binding on the board and the department, and the tax credits represented thereby shall not be modified, terminated, or rescinded or subject to recapture.

123—4.7(15E) Transfer of tax credit certificates. Certificates shall be transferable by the holders and any subsequent holders to any transferee or transferees.

Transfer of a certificate may be effected only by the holder's surrender of the certificate to the board with an endorsement in favor of the transferee, or transferees, and a statement containing the name, address and tax identification number of the transferee, and a written request for the board to issue a replacement certificate or certificates in the name of the transferee(s) (as well as, in any case where the transferor requests that more than one replacement certificate be issued, a statement by the transferor that sets forth the percentages of the aggregate amount of tax credits represented by the transferred certificate that are to be represented by each replacement certificate).

Within 30 days after the surrender and endorsement of a certificate, the board shall issue a replacement certificate or certificates in the name of the transferee(s). Once a transferor of a certificate has surrendered a certificate to the board, such transferor may no longer use the tax credits represented by such certificate.

A holder shall have the right to pledge and grant security interests in certificates and tax credits held by such holder as collateral for loans to or other obligations of such holder.

123—4.8(15E) Cancellation of tax credits upon receipt of scheduled return. Tax credits are subject to cancellation only upon receipt by the designated investors of an actual re-

turn equal to the scheduled return. At the time of each distribution to designated investors in a fund of funds (or to a class of designated investors in such fund of funds) prior to the redemption date, the Iowa capital investment corporation shall determine the amount of tax credits related to such fund of funds (or to a class of equity interests in such fund of funds) that have been canceled and have become null and void by reason of such distribution, if any, and shall certify such amount to the board. After any such certification, the board shall certify to each holder of a certificate related to tax credits that have been canceled, at the holder's address as shown on the certificate register, and to the department the amount of tax credits that are deemed to have been canceled and to be null and void. If at any time prior to the redemption date the actual return from a fund of funds to designated investors (or to a class of designated investors in such fund of funds) shall equal the scheduled return, the Iowa capital investment corporation shall so certify to the board. After any such certification, the board shall certify to each such holder at the holder's address as shown on the certificate register and to the department that all certificates relating to such fund of funds (or class of equity interests in such fund of funds) shall be deemed to have been canceled and to be null and void. Tax credits in respect to a fund of funds that are canceled may be reissued in respect to another fund of funds.

123—4.9(15E) Lost or mutilated tax credit certificates.

Upon receipt of evidence satisfactory to the board of the loss, theft, destruction or mutilation of any certificate, and in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the board, or in case of any such mutilation, upon surrender and cancellation of such certificate, the board shall issue and deliver to the holder a replacement certificate.

123—4.10(15E) Claiming the tax credits. The holder shall attach a copy of the verification or (if the applicable certificate has been transferred after the date of such verification) a copy of the certificate issued to such holder to any tax return in which verified tax credits are used to reduce tax liabilities. Verified tax credits may be carried forward by the holder for use in any of the seven calendar years following the applicable redemption year.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of the following amounts of tax credits to reduce tax liabilities in the indicated years: 2010: \$700,000; 2011: \$140,000; 2012: \$70,000. Holder X has zero Iowa tax liability in 2010, \$900,000 of tax liabilities in 2011 and \$100,000 of tax liabilities in 2012. Holder X may carry forward the \$700,000 in tax credits that were first useable in 2010. Holder X may use up to \$840,000 of tax credits in 2011 and \$70,000 in 2012.

EXAMPLE 2: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of tax credits to reduce tax liabilities that are the same as in Example 1. Holder X has zero in Iowa taxable income in each of the years 2010 through 2014. Holder X may carry forward the \$700,000 of tax credits attributable to 2010 and use such tax credits in years 2015, 2016 and 2017 (i.e., up to seven tax years after 2010). To the extent that the \$700,000 of tax credits attributable to 2010 is not used by 2017, Holder X may no longer use such tax credits. Holder X may carry forward the \$140,000 of tax credits attributable to 2011 and use such tax credits in years 2015, 2016, 2017 and

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2018 (i.e., up to seven tax years after 2011). To the extent that the \$140,000 of tax credits attributable to 2011 is not used by 2018, Holder X may no longer use such tax credits. Holder X may carry forward the \$70,000 of tax credits attributable to 2012 and use such tax credits in years 2015, 2016, 2017, 2018 and 2019 (i.e., up to seven tax years after 2012). To the extent that the \$70,000 of tax credits attributable to 2012 is not used by 2019, Holder X may no longer use such tax credits.

EXAMPLE 3: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of tax credits to reduce tax liabilities that are the same as in Example 1. In 2011, Holder X actually uses \$840,000 of tax credits to reduce an equal amount of tax liabilities (reducing Holder X's tax liabilities in 2011 to zero). In 2014, as a result of an audit, Holder X's tax liabilities for 2011 are changed to \$700,000. That adjustment creates \$140,000 in tax credits that were not actually useable in 2011. Holder X may use this \$140,000 of tax credits in years 2012 through 2018.

If a holder is a partnership (whether general, limited or limited liability), limited liability company that has not elected to be taxed as a corporation for federal income tax purposes, or a corporation for which a valid Iowa "S" election is in effect, and such holder has no tax liability because only the partners, members or shareholders of such holder are subject to the tax liabilities imposed by the state of Iowa and described in section 15E.62(6) of the Act, the holder may allocate the tax credits represented by the holder's certificate among the holder's partners, members or shareholders. Such allocation shall be made on the basis of the pro rata share of earnings from the partnership, limited liability company, or S corporation calculated in accordance with the organizational documents of the holder.

If a holder is an estate or trust, the tax credits represented by the holder's certificate shall be allocated to such estate or trust or to such other person to whom the income of such estate or trust is taxed in proportion to each such person's actuarial interest in such estate or trust.

123—4.11(15E) Notification to the department of revenue. Upon the issuance, distribution, redemption, or transfer of tax credit certificates, the board shall provide copies of the tax credit certificates or replacement certificates to the department of revenue.

123—4.12(15E) Other provisions. The department shall maintain the certificate register at its principal office. The certificate register shall be open to inspection by holders during the department's normal business hours. The department shall, upon request, issue confirmation as to the ownership of a certificate or entitlement to tax credits. The certificate registry is the conclusive record of holders and their entitlements to tax credits.

All notices, requests, and submissions that regulations required to be sent to the board shall be sent to the Iowa Capital Investment Board in care of the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319.

Each fund of funds shall principally make investments in venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of Iowa and who have committed to maintain a physical presence within the state of Iowa. For purposes of this requirement, a physical presence in Iowa includes, but is not limited to, having an office or oth-

er business location in Iowa or having employees or representatives present in Iowa on a regular and continuing basis.

123—4.13(15E) Redemption date and priority of tax credits with respect to limited partnership interests in the Iowa fund of funds, Fund A. The redemption date for Fund A shall be the later of (1) the end of the fifth year after the last closing for Fund A or (2) the date on which Fund A has liquidated its interest in all portfolio entities and has made the final distribution of the proceeds thereof to its designated investors. In the event verified tax credits related to Fund A should become useable in the same fiscal year as verified tax credits related to any other fund of funds, the tax credits related to Fund A shall have preference over those of any other fund of funds with respect to the \$20 million limitation. The 30-day period for verification of tax credits may be extended in the case of any fund of funds other than Fund A in order to give effect to the priority of tax credits with respect to Fund A.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: The hypothetical redemption date for Fund A is September 1, 2009, whereupon an aggregate of \$50 million in tax credits shall become verified tax credits. The hypothetical redemption date for Fund B is December 1, 2009, whereupon an aggregate of \$30 million in tax credits shall become verified tax credits. The \$20 million per fiscal year limitation shall be applied as follows:

Fiscal Year	Tax Credits Useable by Holders With Respect to Fund A	Tax Credits Useable by Holders With Respect to Fund B
2009 - 2010	\$20,000,000	-0-
2010 - 2011	\$20,000,000	-0-
2011 - 2012	\$10,000,000	\$10,000,000
2012 - 2013	-0-	\$20,000,000

EXAMPLE 2: The hypothetical redemption date for Fund B is December 1, 2009. The hypothetical redemption date for Fund A is December 1, 2010. No tax credits with respect to Fund B may be verified or used until the amount of verified tax credits for Fund A is determined. Verified tax credits with respect to Fund A (if any) will then become useable in their entirety before verified tax credits with respect to Fund B, as illustrated by Example 1.

In the event verified tax credits related to two or more classes of limited partnership interests in Fund A (each a Fund A class) should become useable in the same fiscal year, the tax credits related to any Fund A class shall have preference over those of any other Fund A class with respect to the \$20 million limitation described in this rule only as specified in the limited partnership agreement for Fund A.

123—4.14(15E) Scheduled return and tax credits represented by certificates issued with respect to Class C limited partnership interests in Fund A. The scheduled return for designated investors in Class C limited partnership interests (the "Class C interests") in Fund A shall be equal to each such designated investor's investment amount plus a percentage calculated in accordance with the limited partnership agreement for Fund A.

If the percentage of return certified for the benefit of holders of certificates issued with respect to Class C interests in Fund A is less than 100 percent, the board shall verify tax credits represented by each certificate issued with respect to Class C limited partnership interests in Fund A in an amount

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equal to the product of (1) the percentage represented by the positive difference between 100 percent and the percentage of return multiplied by (2) the scheduled return determined in accordance with the formula reflected on such certificate.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Holder X has a certificate for which the scheduled return is \$1,500,000. The maximum amount of tax credits represented by the certificate is \$1,500,000. The Iowa capital investment corporation determines that the percentage of return is 15 percent. The positive difference between 100 percent and 15 percent is 85 percent. Accordingly, Holder X's verified tax credits would be \$1,275,000, calculated as follows:

$$100\% - 15\% = 85\%$$

$$85\% \times \$1,500,000 = \$1,275,000$$

Holder X's verified tax credits would initially become useable to reduce tax liabilities in the applicable initial redemption year and in each of a maximum of four subsequent redemption years in the percentages determined by the board.

EXAMPLE 2: Holder X has a certificate for which the scheduled return is \$1,500,000. The maximum amount of tax credits represented by the certificate is \$1,500,000. The Iowa capital investment corporation determines that the percentage of return is 85 percent. The positive difference between 100 percent and 85 percent is 15 percent. Accordingly, Holder X's verified tax credits would be \$225,000, calculated as follows:

$$100\% - 85\% = 15\%$$

$$15\% \times \$1,500,000 = \$225,000$$

Holder X's verified tax credits would initially become useable to reduce tax liabilities in the applicable initial redemption year and in each of a maximum of four subsequent redemption years in the percentages determined by the board.

EXAMPLE 3: Holder X has a certificate for which the scheduled return is \$1,500,000. The maximum amount of tax credits represented by the certificate is \$1,500,000. The Iowa capital investment corporation determines that the percentage of return is 162 percent. Holder X has no redeemable tax credits because there is no positive difference between 100 percent and 162 percent.

123—4.15(15E) Scheduled return and tax credits represented by certificates issued with respect to Class A limited partnership interests in the Iowa fund of funds, Fund A. The scheduled return for designated investors in Class A limited partnership interests ("Class A interests") in Fund A shall be equal to each such designated investor's investment amount. If the percentage of return certified for the benefit of holders of certificates issued with respect to Class A interests in Fund A is less than 100 percent, the board shall verify tax credits represented by each certificate issued with respect to Class A interests in Fund A in an amount equal to the product of (1) the percentage represented by the positive difference between 100 percent and the percentage of return multiplied by (2) the investment amount reflected on such certificate multiplied by (3) a percentage determined in accordance with the limited partnership agreement (which percentage shall not exceed 100 percent).

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Holder X has a certificate evidencing an investment amount of \$1,000,000 in Class A interests. Assuming that the percentage set by the limited partnership agreement is 66.66 percent, the maximum amount of tax credits

represented by the certificate is \$666,666. The Iowa capital investment corporation determines that the percentage of return is 15 percent. The positive difference between 100 percent and 15 percent is 85 percent. Accordingly, Holder X's verified tax credits would be \$566,610, calculated as follows:

$$100\% - 15\% = 85\%$$

$$85\% \times \$1,000,000 = \$850,000$$

$$\$850,000 \times 66.66\% = \$566,610$$

Holder X's verified tax credits would initially become useable to reduce tax liabilities in the applicable initial redemption year and in each of a maximum of four subsequent redemption years in the percentages determined by the board.

EXAMPLE 2: Holder X has a certificate evidencing an investment amount of \$1,000,000 in Class A interests. Assuming that the percentage set by the limited partnership agreement is 66.66 percent, the maximum amount of tax credits represented by the certificate is \$666,666. The Iowa capital investment corporation determines that the percentage of return is 85 percent. The positive difference between 100 percent and 85 percent is 15 percent. Accordingly, Holder X's verified tax credits would be \$99,990, calculated as follows:

$$100\% - 85\% = 15\%$$

$$15\% \times \$1,000,000 = \$150,000$$

$$\$150,000 \times 66.66\% = \$99,990$$

Holder X's verified tax credits would initially become useable to reduce tax liabilities in the applicable initial redemption year and in each of a maximum of four subsequent redemption years in the percentages determined by the board.

EXAMPLE 3: Holder X has a certificate evidencing an investment amount of \$1,000,000 in Class A interests. Assuming that the percentage set by the limited partnership agreement is 66.66 percent, the maximum amount of tax credits represented by the certificate is \$666,666. The Iowa capital investment corporation determines that the percentage of return is 162 percent. Holder X has no redeemable tax credits because there is no positive difference between 100 percent and 162 percent.

123—4.16(15E) Scheduled return and tax credits represented by certificates issued with respect to Class D limited partnership interests in Fund A. The scheduled return for designated investors in Class D limited partnership interests ("Class D interests") in Fund A shall be equal to each such designated investor's investment amount. If and only if (1) the percentage of return for holders of certificates issued with respect to Class D limited partnership interests in Fund A is less than 100 percent and, (2) as of the redemption date for Fund A, aggregate capital commitments from investors in Fund A, and any other fund of funds, have not in the aggregate exceeded \$100,000,000, then the board shall verify tax credits represented by each certificate issued with respect to Class D limited partnership interests in an amount equal to the product of the percentage represented by the positive difference between 100 percent and the percentage of return multiplied by the investment amount reflected on such certificate. If at any time prior to the redemption date for Fund A, Fund A, together with all other fund of funds, has received aggregate capital commitments from investors in excess of \$100,000,000, then from and after such date the board shall verify tax credits represented by each such certificate on the same terms and for the same percentage as certificates issued with respect to Class A limited partnership interests in Fund A.

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1005.

[Filed Emergency 7/3/03, effective 7/3/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2636B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 692A.13A, the Department of Corrections hereby amends Chapter 38, "Sex Offender Management and Treatment," Iowa Administrative Code.

On May 7, 2003, the Iowa Supreme Court ruled in Bryan Brummer v. Iowa Department of Corrections that a contested case hearing, pursuant to Chapter 17A of the Iowa Code, must be provided to an offender who appeals the offender's sex offender risk assessment.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable in order to comply with this ruling by the Iowa Supreme Court.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and this amendment made effective upon filing on June 26, 2003, so that the amendment takes effect as soon as possible to comply with the ruling by the Iowa Supreme Court. This amendment confers a benefit upon the public by avoiding potential confusion which may arise if the Iowa Supreme Court ruling is not implemented.

The Board of Corrections adopted this amendment on June 5, 2003.

This amendment became effective on June 26, 2003.

This amendment is intended to implement the May 7, 2003, Iowa Supreme Court ruling in Bryan Brummer v. Iowa Department of Corrections, 661 N.W.2d 167 (Iowa 2003).

The following amendment is adopted.

Rescind subrule 38.3(5) and adopt the following new subrule in lieu thereof:

38.3(5) Appeal process.

a. When the department receives a written appeal, the department shall refer the matter to an administrative law judge or a designated presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial findings to the administrative law judge or presiding officer with the written appeal. The administrative law judge or presiding officer shall set a hearing within seven calendar days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

b. Any document that is confidential pursuant to statute, rule, regulation, or other authority will be considered confidential and may be subject to a protective order by motion of any party to the proceeding. The hearing itself may be conducted in camera.

c. Rule 201—12.16(17A), which governs the introduction and consideration of evidence, shall apply to proceedings under this subrule. The administrative law judge or presiding officer may conduct the appeal hearing at any location and may use facsimile machines, telephones, two-way interactive video or other electronic means to conduct any or all hearings. An electronically produced document shall have the same force and effect as an original document.

d. The hearing shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the department of corrections for at least five years from the date of the hearing.

e. The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

f. After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue within 14 calendar days a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party.

g. The registrant, prosecutor, or agency may appeal the administrative law judge's or presiding officer's order to the director of the department of corrections or the director's designee. The appeal must be served in writing within 14 calendar days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department of public safety may undertake affirmative public notification if warranted by the result of the risk assessment.

h. The director of the department of corrections or the director's designee shall consider an appeal on the record made before the administrative law judge or presiding officer. The director or designee shall not consider any additional facts on appeal. The director or designee may request written briefs or oral argument in an appeal. The director or designee shall issue a written decision affirming, reversing, or modifying the order of the administrative law judge or presiding officer. A copy of the decision shall be promptly mailed to each party. The decision of the director or designee constitutes final agency action.

i. Upon disposition of the appeal or 20 days after the final decision of the administrative law judge or presiding officer, all information, including the risk assessment, "Notice of Risk Assessment Findings/Public Notification" and appeal information, and any other documentation, shall be forwarded to the sex offender registry program of the department of public safety.

[Filed Emergency 6/26/03, effective 6/26/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2634B

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

WORKERS' COMPENSATION DIVISION[876](cont'd)

This amendment provides reference to the current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 876—8.8 (85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2003, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that this amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

The Division has determined that the amendment will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions. Therefore, no fiscal rule making accompanies this rule making.

The amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 2003.
The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2002 2003, through June 30, 2003 2004, are the tables in effect on July 1, 2002 2003, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, ~~Circular E, Employer's Tax Guide~~ *New Withholding Tables*, Publication 45 15T [Rev. ~~January 2002~~ June 2003].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, ~~Employer's Supplemental Tax Guide~~ *New Withholding Tables*, Publication 45-A 15T [Rev. January 2002 2003].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/30/03, effective 7/1/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2622B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

The amendment modifies the hearing procedures by designating who may initiate a complaint. The Iowa Department of Transportation (IDOT) has the statutory function of approving the curriculum for behind-the-wheel driving instruction courses and issuing a behind-the-wheel instructor's certificate to those persons who meet the prerequisites established by IDOT rules. This IDOT behind-the-wheel certification is a requirement for issuance of a behind-the-wheel instructor authorization issued by the Board of Educational Examiners as found in 282—21.2(272).

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2417B**. A public hearing was held on May 23, 2003. No one attended the public hearing, and one written comment was received from a professional organization that opposed the amendment. The Board carefully reviewed the written comment and voted unanimously to adopt the amendment.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective August 27, 2003. The following amendment is adopted.

Amend subrule 11.4(1) as follows:

11.4(1) Who may initiate. *The following entities may initiate a complaint:*

- a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.
- b. Local boards of education.
- c. Parents or guardians of students involved in the alleged complaint.
- d. The executive director of the board of educational examiners ~~may initiate a complaint~~ if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. Has falsified a license or authorization issued by the board; or

4. Has submitted false information on a license or authorization application filed with the board; and

(2) The executive director verifies the information through review of official records maintained by a court, or the department of human services registry of founded child abuse reports, or the practitioner licensing authority of another state, or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

[Filed 7/3/03, effective 8/27/03]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2639B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

The amendment modifies the hearing procedures by designating who shall prosecute complaints. 2002 Iowa Acts, chapter 1084 (House File 2482), amended Iowa Code section 272.2(4) to provide the Board with express authority to designate who may initiate complaints and who shall prosecute complaints.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2416B**. A public hearing on the amendment was held on May 23, 2003. No one attended the public hearing, and three written comments were received. One comment that supported the amendment was submitted by the Iowa School Boards Association, and two comments opposing the amendment were submitted by the Iowa State Education Association. School Administrators of Iowa had previously supported the proposed amendment orally.

The Board has deliberated on this topic for over a year. The Board has received both written and oral comments from professional organizations at various Board meetings.

Without this rule change, the Board of Educational Examiners would remain the only state licensing authority which requires a complainant to carry the burden of prosecuting professional licensing cases and, correspondingly, allows an interested party to control these proceedings. This amendment modifies the complaint process and places the Attorney General's office in the position of representing the public interest in these proceedings.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective August 27, 2003. The following amendment is adopted.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Amend subrule 11.21(3) as follows:

11.21(3) Legal representation. ~~Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case.~~

a. Any party The respondent has a right to participate in all hearings or prehearing conferences and may be represented by an attorney or another person authorized by law.

b. When a complaint is initiated by the executive director of the board under paragraph 11.4(1)“d” of these rules, evidence supporting the complaint may be introduced at the hearing by an assistant attorney general. The office of the attorney general shall be responsible for prosecuting complaint allegations in all contested case proceedings before the board, except those cases in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board or the complainant in that case, but shall represent the public interest.

c. In a case in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations, the person who files the complaint with the board, or the complainant's designee, shall represent the complainant during the contested case proceedings.

[Filed 7/7/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2624B

EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, “Issuance of Practitioner’s Licenses and Endorsements,” Iowa Administrative Code.

The Board currently has in place a rule regarding the correction of a license. Although the rule only addresses corrections related to endorsements, Board staff have historically provided corrections of other typographical or clerical errors, without charge, if the error is identified within 30 days of the date of issuance of the license. Examples include correcting spelling errors, the type of license or endorsement issued, and the expiration date. The proposed amendment clarifies the process to correct a license up to 30 days after issuance and the process to correct a license more than 30 days after issuance.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2418B**. A public hearing on the amendment was held on May 23, 2003. No one attended the public hearing, and no written comments were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective August 27, 2003.

The following amendment is adopted.

Amend rule 282—14.107(272) as follows:

282—14.107(272) Correcting licenses. ~~If, at the time of the original issuance of a license, a person does not receive an endorsement for which the individual is eligible, a licensee notifies board staff of a typographical or clerical error on the license within 30 days of the date of the board’s mailing of a license, a corrected license shall be issued without charge to the licensee. Also, a corrected license shall be issued if a person receives an endorsement for which the person is not eligible. If notification of a typographical or clerical error is made more than 30 days after the date of the board’s mailing of a license, a corrected license shall be issued upon receipt of the fee for issuance of a duplicate license. For purposes of this rule, typographical or clerical errors include misspellings, errors in the expiration date of a license, errors in the type of license issued, and the omission or misidentification of the endorsements for which application was made. A licensee requesting the addition of an endorsement not included on the initial application must submit a new application and the appropriate application fee.~~

[Filed 7/3/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2625B

EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, “Issuance of Practitioner’s Licenses and Endorsements,” Iowa Administrative Code.

These amendments clarify the names of the various licenses issued by the Board by eliminating the words “conditional” and “emergency” and inserting alphabetical characters. It appears that the words “conditional” and “emergency” indicate to various national audiences and out-of-state individuals that a person has not yet attained minimal state licensure. The words “conditional” and “emergency” as currently used by the Board mean that an individual has attained full Iowa licensure, but the individual is either working on a new endorsement or the individual has not yet attained completion of an added endorsement. It has become increasingly difficult to explain Iowa’s conditional license status to various federal officials and to complete various national surveys because other states and the federal government use the words “conditional” and “emergency” to mean that an individual has not yet attained full state licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2419B**. A public hearing on the amendments was held on May 23, 2003. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective August 27, 2003.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.110, 14.115 to 14.118, 14.121(5), 14.131] is being omitted. These amendments are identical to those published under Notice as **ARC 2419B**, IAB 4/16/03.

[Filed 7/3/03, effective 8/27/03]

[Published 7/23/03]

[For replacement pages for IAC, see IAC Supplement 7/23/03.]

ARC 2626B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The amendments modify the requirements for the school psychologist endorsement and also provide for a one-year conditional license for applicants who must complete an approved internship or a thesis as an element of the approved program in preparation for the school psychologist endorsement. Work on these proposed amendments has included an analysis of national standards as well as discussions with other state-level personnel involved in programs for school psychologists.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2421B**. A public hearing on the amendments was held on May 23, 2003. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective August 27, 2003.

The following amendments are adopted.

Amend subrule 15.3(8) as follows:

15.3(8) School psychologist.

a. Authorization. The holder of this endorsement is authorized to serve as a school psychologist with pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. Program requirements.

(1) An applicant shall have completed an approved program of graduate study in preparation for service as a school psychologist through one of the following options:

1. Completion of a master's degree with sufficient graduate semester hours beyond a baccalaureate degree to total 60; or

2. Completion of a specialist's degree of at least 60 graduate semester hours with or without completion of a terminal master's degree program; or

3. Completion of a 60-semester-hour master's degree program; or

4. Completion of a graduate school psychology program that is currently approved (or was approved at the time of

graduation) by the National Association of School Psychologists or the American Psychological Association; or

5. Certification as a Nationally Certified School Psychologist by the National Association of School Psychologists.

The program must include a practicum in a school setting designed to give the school psychologist an opportunity to develop an understanding of the role of psychology in the classroom through participation in classroom procedures in a supportive role.

(2) ~~Complete~~ The program shall include an approved human relations component.

(3) The program must include preparation that contributes to the education of ~~the handicapped and the gifted and talented students with disabilities and students who are gifted and talented.~~

c. School psychologist one-year conditional license.

(1) Requirements for a one-year conditional license. A nonrenewable conditional license valid for one year may be issued to an individual who must complete an internship or thesis as an aspect of an approved program in preparation for the school psychologist endorsement. The one-year conditional license may be issued under the following limited conditions:

1. Verification from the institution that the internship or thesis is a requirement for successful completion of the program.

2. Verification that the employment situation will be satisfactory for the internship experience.

3. Verification from the institution of the length of the approved and planned internship or the anticipated completion date of the thesis.

4. Verification of the evaluation processes for successful completion of the internship or thesis.

5. Verification that the internship or thesis is the only requirement remaining for successful completion of the approved program.

(2) Written documentation of the above requirements must be provided by the official at the institution where the individual is completing the approved school psychologist program and forwarded to the Iowa board of educational examiners with the application form for licensure.

[Filed 7/3/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2616B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8 and 507B.2, the Iowa Insurance Division hereby amends Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

These amendments clarify guidelines for insurance advertisements and set new guidelines for insurance producers who are also financial planners. The amendments remove education and training materials from the definition of advertising and create a new subrule that gives guidelines for insurers on this subject. The amendments in Item 15 clarify the relationship of Chapter 15 to Chapters 16 and 33 with regard to the "free look" required with life insurance policies and

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annuities. Four new rules are adopted with detailed guidelines for settlement of property and casualty insurance claims.

The amendments adopt two NAIC model regulations and restructure the chapter to create new Divisions III and IV. The new Division III requires specific disclosures to consumers who purchase life insurance policies with face values of up to \$15,000. Insurers will be required to notify consumers if the cumulative premiums paid may exceed the face value of the policy. The new Division IV includes new annuity disclosure requirements and requires insurers to deliver certain educational materials to consumers who purchase annuities.

The amendments rescind a requirement for insurers to complete a form called "Acknowledgment of Nonduplication" and eliminate the appendix that included the form. The amendments also make a number of technical changes, i.e., restructure the rules into topical subdivisions and change a number of references from "person" to "individual."

Notice of Intended Action was published in the April 2, 2003, Iowa Administrative Bulletin as **ARC 2364B**. A public hearing was held on April 24, 2003. Interested persons were given ten additional days to submit comments. Following that comment period, another comment period which extended to June 27, 2003, was provided to interested persons. As a result of comments received at the hearing and the two subsequent comment periods, a number of changes were made as follows:

Rule 15.2(507B), definition of "twisting," was amended to delete the reference to a 10 percent withdrawal.

Paragraph 15.8(3)"c" was amended to delete the phrase "for financial planning."

Subrule 15.13(3) was amended to substitute "employees" for "appointed producers."

Proposed subrule 15.31(2) was deleted.

Subrule 15.41(5) was amended to insert a reference to releases for medical records.

Subrule 15.43(7) was amended to delete references to designated repair shops.

Subrule 15.43(9) was amended to remove the reference to a \$1,000 cap.

Subrule 15.43(10) was amended to clarify that insurers should consider diminished value as a measure of damages when repairs do not fully restore a vehicle to its preaccident condition as measured by market value and that insurers should establish a supervisory system to implement this rule.

Paragraph 15.44(1)"b" was amended to clarify the insurer's obligation regarding requirements for reasonably uniform appearance.

Paragraph 15.44(2)"a" was amended to allow use of market value in determining actual cash value.

Subrule 15.44(3) was added to clarify the scope of the rule.

Subrule 15.45(2) was amended to delete references to specific certifying bodies and to insert a reference to federal safety standards.

Rule 15.51(507B) was amended to include an implementation date for rules in Division III.

Rule 15.61(507B) was amended to include an implementation date for rules in Division IV.

Subrule 15.62(5) was amended to reference a definition of charitable gift annuities.

Subrule 15.64(1) was amended to clarify delivery requirements.

Other nonsubstantive changes were made.

The commissioner adopted the amendments on July 3, 2003.

These amendments shall become effective August 27, 2003.

These amendments are intended to implement Iowa Code chapter 507B.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 15** by creating new Division I, Sales Practices, consisting of current rules 191—15.1(507B) to 15.14(507B).

ITEM 2. Amend rule **191—15.2(507B)**, definition of "advertisement," numbered paragraph "1," as follows:

1. Printed and published material, audio and visual material, and descriptive literature of an insurer or producer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, computer on-line networks and similar displays; descriptive literature and sales aids of all kinds issued by an insurer or producer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; *and* sales talks, presentations, and material for use by producers; ~~and material and oral instruction used by the insurer or producer for the recruitment, training, and education of producers in the sale of insurance.~~

ITEM 3. Amend the following definitions in rule **191—15.2(507B)**:

"Duplicate Medicare supplement insurance" shall mean the sale or the attempt to knowingly sell to ~~a person~~ *an individual* a policy of insurance designed to supplement Medicare benefits as provided in The Health Insurance for the Aged Act, Title XVII of the Social Security Amendments of 1965 as then constituted or later amended when the ~~person~~ *individual* is already insured under such a policy.

"Duplication" means policies of the same coverage type according to minimum standards classifications outlined in 191 IAC 36.6(514D) which overlap to the extent that a reasonable ~~person~~ *individual* would not consider the ownership of the policies to be beneficial.

"Insurer" shall mean any ~~person~~, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity engaged in the business of insurance.

"Person" shall mean any individual, corporation, association, partnership, trust, ~~or~~ benevolent association *or any other business relationship recognized by law.*

"Preneed funeral contract or prearrangement" shall mean an agreement by or for ~~a person~~ *an individual* before the ~~person's~~ *individual's* death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

"Twisting" shall mean any action by a producer or insurer to induce or attempt to induce any ~~person~~ *individual* to lapse, forfeit, surrender, terminate, retain, assign, borrow, or convert a policy *or an annuity* in order that such ~~person~~ *individual* procure another policy *or annuity*, when such action would operate to the overall detriment of the interests of the ~~person~~ *individual*.

ITEM 4. Amend rule **191—15.2(507B)** by adopting the following new definitions in alphabetical order:

"Aftermarket crash parts" means replacement parts as defined in Iowa Code section 537B.4.

"Certificate" means a statement of the coverage and provisions of a policy of group accident and sickness insurance which has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached.

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"Institutional advertisement" means an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of accident and sickness insurance, or the promotion of the insurer as a seller of accident and sickness insurance.

"Invitation to contract" means an advertisement for accident and sickness insurance that is neither an invitation to inquire nor an institutional advertisement.

"Invitation to inquire" means an advertisement having as its objective the creation of a desire to inquire further about accident and sickness insurance and that is limited to a brief description of the loss for which benefits are payable. An invitation to inquire may not refer to cost but may contain the dollar amount of benefits payable and the period of time during which benefits are payable.

"Limited benefit health coverage" shall have the same meaning as defined in 191—subrule 36.6(10).

"Prominently" or "conspicuously" means that the information to be disclosed will be presented in a manner that is noticeably set apart from other information or images in the advertisement.

ITEM 5. Amend subrule 15.3(1) as follows:

15.3(1) Form and content of advertisements. The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be reasonably expected to create upon a ~~person~~ *an individual* in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

Information regarding exceptions, limitations, reductions and other restrictions required to be disclosed by this rule shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

ITEM 6. Amend paragraph **15.3(2)“c”** as follows:

c. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free," "extra cash" and substantially similar phrases which have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable a ~~person~~ *an individual* to make a profit from being hospitalized.

ITEM 7. Add **new** paragraph **15.3(2)“h”** as follows:

h. An invitation to inquire shall contain a provision in the following or substantially similar form:

"This policy has [exclusions] [limitations] [reduction of benefits] [terms under which the policy may be continued in force or discontinued]. For costs and complete details of the coverage, call [or write] your insurance agent or the company [whichever is applicable]."

ITEM 8. Amend subrule 15.3(3) as follows:

15.3(3) Prohibited terms in life insurance and annuity policies. No advertisement for a life insurance or annuity policy shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," "retirement plan," or other similar term which has the capacity or tendency to mislead an insured or prospective insured to believe that the insurer is offering something other than an insurance policy or some benefit not available to oth-

er persons *individuals* of the same class and equal expectation of life. An advertisement shall not state that there are "no more premiums" or that premiums will "vanish" or "disappear" or use similar terms when such statement is not based on the guaranteed rates.

ITEM 9. Amend subrule **15.3(4)** by adding the following **new** unnumbered paragraph:

An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or other policies providing benefits that are limited in nature shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY," "THIS POLICY PROVIDES LIMITED BENEFITS," or "THIS IS A CANCER-ONLY POLICY."

ITEM 10. Amend paragraph **15.3(9)“b”** as follows:

b. No advertisement shall use any combination of words, symbols, or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency that it would lead a reasonable person *individual* to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state, or federal government.

ITEM 11. Amend rule 191—15.3(507B) by adding **new** subrules 15.3(11) through 15.3(13) as follows:

15.3(11) Special offers. Advertisements, applications, requests for additional information and similar materials are prohibited if they state or imply that the recipient has been individually selected to be offered insurance or has had the recipient's eligibility for the insurance individually determined in advance when the advertisement is directed to all individuals in a group or to all individuals whose names appear on a mailing list.

15.3(12) Disclosure requirement. In an advertisement that is an invitation to contract for an accident and sickness insurance policy that is guaranteed renewable, cancelable or renewable at the option of the company, the advertisement shall disclose that the insurer has the right to increase premium rates if the policy so provides.

15.3(13) Group or quasi-group implications.

a. An advertisement of a particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy and, as members, enjoy special rates or underwriting privileges, unless that is the fact.

b. This rule prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements which state or imply that their class membership entitles the member to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

c. Advertisements that indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population or that a particular segment of the population is an acceptable risk, when the distinctions are not maintained in the issuance of policies, are prohibited.

d. An advertisement to join an association, trust or discretionary group that is also an invitation to contract for insurance coverage shall clearly disclose that the applicant will be purchasing both membership in the association, trust or discretionary group and insurance coverage. The insurer shall solicit insurance coverage on a separate and distinct application that requires a separate signature. The separate and distinct application required need not be on a separate docu-

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ment or contained in a separate mailing. The insurance program shall be presented so as not to conceal the fact that the prospective members are purchasing insurance as well as applying for membership, if that is the case. Similarly, the use of terms such as "enroll" or "join" to imply group or blanket insurance coverage is prohibited when that is not the fact.

e. Advertisements for group or franchise group plans that provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless that is the fact.

ITEM 12. Amend rule 191—15.5(507B) as follows:

191—15.5(507B) Health insurance sales to persons individuals 65 years of age or older.

15.5(1) The sale of duplicate Medicare supplement insurance is prohibited.

15.5(2) Prohibition of sale without acknowledgment of nonduplication.

a. Insurers or producers shall obtain an acknowledgment of nonduplication as set forth in Appendix II with all applications for any type of health insurance sold to an individual who is 65 years of age or older. This acknowledgment shall be obtained at the same time as the application and shall be submitted to the insurer with the application.

b. In order to obtain this acknowledgment, insurers or producers shall offer to examine all health insurance policies owned by a prospective purchaser and advise that person as to whether the purchase of the proposed policy will result in any duplication of benefits.

c. Insurers who do not use producers shall implement a similar system of review at no cost to the proposed insured.

ITEM 13. Amend paragraph **15.8(2)“c”** as follows:

c. Producers and insurers shall not, without good cause:

(1) Fail or refuse to furnish any person *individual*, upon reasonable request, information to which that person *individual* is entitled, or to respond to a formal written request or complaint from any person *individual*.

(2) Sell an insurance policy or rider to a person *an individual* which is a duplication of a policy or rider which the person *individual* owns or for which the person *individual* has applied at the time of the sale.

ITEM 14. Amend subrule 15.8(3) as follows:

15.8(3) Prohibited designations and fees.

a. A producer shall not represent, directly or indirectly, that the producer is a "financial planner," "investment adviser," "financial counselor," or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when the sole intent of the producer is to engage in the sale of insurance. This subrule does not prohibit the use of designations acquired through a recognized national program.

When an insurance producer is engaged only in the sale of insurance policies or annuities, the insurance producer shall not hold the producer out, directly or indirectly, to the public as a "financial planner," "investment adviser," "consultant," "financial counselor," or any other specialist solely engaged in the business of financial planning or giving advice relating to investments, insurance, real estate, tax matters or trust and estate matters. This provision does not preclude insurance producers who hold some form of formal recognized financial planning or consultant certification or designation from using this certification or designation when they are only selling insurance.

b. *An insurance producer shall not engage in the business of financial planning without disclosing to the client prior to the execution of the agreement required by paragraph "c" or to the solicitation of the sale of a product or service that the producer is also an insurance producer and that a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. The disclosure requirement under this paragraph may be met by including the disclosure in any disclosure required by federal or state securities law.*

c. *An insurance producer shall not charge fees other than commissions unless such fees are based upon a written agreement signed by the client in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the client at the time the agreement is signed by the client. The agreement must specifically state:*

(1) The service for which the fee is to be charged;

(2) The amount of the fee to be charged or how it will be determined or calculated; and

(3) That the client is under no obligation to purchase any insurance product through the insurance producer or consultant.

The insurance producer shall retain a copy of the agreement for not less than three years after completion of services, and a copy shall be available to the commissioner upon request.

b.d. Producers shall not charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies. This prohibition shall not apply to assigned risk policies and commercial property/and casualty policies. Any additional fee that a producer intends to charge for assigned risk policies and commercial property/and casualty policies must be fully disclosed to the insured.

ITEM 15. Amend rule 191—15.9(507B) as follows:

191—15.9(507B) Right to return a life insurance policy or annuity (free look). The owner of an individual policy has the right, within ten days after receipt of a life insurance policy or annuity, to a free-look period. During this period, the policyowner may return the life insurance policy or annuity to the insurer at its home office, branch office, or to the producer through whom it was purchased. If so returned, the premium paid will be promptly refunded, the policy or annuity voided and the parties returned to the same position as if a policy or annuity had not been issued. *If the transaction involved a replacement, the length of the free-look period will be determined according to 191—Chapter 16.*

If the transaction involved a variable product, the amount to be refunded shall be determined according to the policy language. The calculations must comply with the relevant rule in either 191—Chapter 16, Replacement of Life Insurance and Annuities, or 191—Chapter 33, Variable Life Insurance Model Regulation.

ITEM 16. Amend paragraph **15.11(1)“a”** as follows:

a. A contract shall not be denied to a person *an individual* based solely on that individual's sex or marital status. No benefits, terms, conditions or type of coverage shall be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent permitted under the Iowa Code or Iowa Administrative Code. An insurer may consider marital status for the purpose of defining persons *individuals* eligible for dependents' benefits. This subrule does not apply to group life insurance policies or group annuity contracts issued in connection with pension and welfare plans which are subject

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to the federal Employee Retirement Income Security Act of 1974 (ERISA).

ITEM 17. Amend subparagraph **15.11(1)“b”(1)** as follows:

(1) Denying coverage to ~~persons~~ *individuals* of one sex employed at home, employed part-time or employed by relatives when coverage is offered to ~~persons~~ *individuals* of the opposite sex similarly employed.

ITEM 18. Amend subrule 15.11(3), introductory paragraph and paragraph “a,” as follows:

15.11(3) Income discrimination. An insurer shall not refuse to issue, limit the amount or apply different rates to ~~persons~~ *individuals* of the same class in the sale of individual life insurance based solely upon the prospective insured’s legal source or level of income, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. The portion of this subrule pertaining to level of income does not:

a. Apply to the sale of disability income insurance of any kind or of any insurance designed to protect against economic loss due to a disruption in the regular flow of ~~a person’s~~ *an individual’s* earned income;

ITEM 19. Amend subrule 15.11(4) as follows:

15.11(4) Domestic abuse. A contract shall not be denied to ~~a person~~ *an individual* based solely on the fact *that* such ~~person~~ *individual* has been or is believed to have been a victim of domestic abuse as defined in Iowa Code section 236.2.

ITEM 20. Amend subrule 15.12(1), introductory paragraph, as follows:

15.12(1) Written release. No insurer shall obtain a test of any ~~person~~ *individual* in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the ~~person~~ *individual* to be tested provides a written release on a form which contains the following information:

ITEM 21. Amend rule 191—15.13(507B) by adding the following new subrule:

15.13(3) Education and training materials. Every insurer shall establish and maintain a system of control over the content and form of all material used by the insurer or any of its employees for the recruitment, training, and education of producers in the sale of insurance. Upon request, copies of these materials shall be made available to the commissioner.

ITEM 22. Renumber rules **191—15.15(507B)** as **191—15.45(507B)**, **191—15.16(507B)** as **191—15.33(507B)**, and **191—15.17(507B)** as **191—15.32(507B)**, and reserve rule numbers 191—15.15 to 15.30 in Division I.

ITEM 23. Adopt new Division II, Claims, to consist of rules 191—15.31 to 15.50.

ITEM 24. Adopt new rule 191—15.31(507B) as follows:

191—15.31(507B) General claims settlement guidelines. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage that contains language purporting to release the insurer or its insured from total liability.

ITEM 25. Amend renumbered rule 191—15.32(507B) as follows:

Amend the catchwords as follows:

191—15.32(507B) Prompt payment of certain health claims.

Amend renumbered subrule **15.32(1)**, paragraph “a,” definition of “coordination of benefits for third-party liability,” as follows:

“Coordination of benefits for third-party liability” means a claim for benefits by a covered ~~person~~ *individual* who has coverage under more than one health benefit plan.

ITEM 26. Reserve rules **191—15.34** to **15.40**.

ITEM 27. Adopt the following new rules:

191—15.41(507B) Claims settlement guidelines for property and casualty insurance. For purposes of this rule, “insurer” means property and casualty insurers.

15.41(1) An insurer shall fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of a policy or contract under which a claim is presented.

15.41(2) Within 30 days after receipt by the insurer of properly executed proofs of loss, the first-party property claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing, and the claim file of the insurer shall contain documentation of the denial.

When there is a reasonable basis supported by specific information available for review by the commissioner that the first-party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subrule. However, the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

15.41(3) If the insurer needs more time to determine whether a first-party claim should be accepted or denied, the insurer shall so notify the first-party claimant within 30 days after receipt of the proof of loss and give the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 45 days from the initial notification and every 45 days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for investigation.

When there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that the first-party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subrule. However, the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

15.41(4) Insurers shall not fail to settle first-party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

15.41(5) No insurer shall make statements indicating that the rights of a third-party claimant may be impaired if a form or release, other than a release to obtain medical records, is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

15.41(6) The insurer shall affirm or deny liability on claims within a reasonable time and shall tender payment within 30 days of affirmation of liability, if the amount of the claim is determined and not in dispute. In claims where multiple coverages are involved, payments which are not in dispute under one of the coverages and where the payee is known should be tendered within 30 days if such payment

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would terminate the insurer's known liability under that coverage.

15.41(7) No producer shall conceal from a first-party claimant benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

15.41(8) A claim shall not be denied on the basis of failure to exhibit property unless there is documentation of breach of the policy provisions to exhibit or cooperate in the claim investigation.

15.41(9) No insurer shall deny a claim based upon the failure of a first-party claimant to give written notice of loss within a specified time limit unless the written notice is a written policy condition. An insurer may deny a claim if the claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the claimant's duty to cooperate with the insurer.

15.41(10) No insurer shall indicate to a first-party claimant on a payment draft, check or in any accompanying letter that said payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the contract.

15.41(11) No insurer shall request or require any insured to submit to a polygraph examination unless authorized under the applicable insurance contracts and state law.

191—15.42(507B) Acknowledgment of communications by property and casualty insurers. For purposes of this rule, "insurer" means property and casualty insurers.

15.42(1) Upon receiving notification of a claim, an insurer shall, within 15 days, acknowledge the receipt of such notice unless payment is made within that period of time. If an acknowledgment is made by means other than in writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated.

15.42(2) Upon receipt of any inquiry from the Iowa insurance division regarding a claim, an insurer shall, within 21 days of receipt of such inquiry, furnish the division with an adequate response to the inquiry, in duplicate.

15.42(3) The insurer shall reply within 15 days to all pertinent communications from a claimant which reasonably suggest that a response is expected.

15.42(4) Upon receiving notification of claim, an insurer shall promptly provide necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subrule within 15 days of notification of a claim shall constitute compliance with subrule 15.42(1).

191—15.43(507B) Standards for settlement of automobile insurance claims.

15.43(1) Loss calculation and deviation guidelines.

a. Loss calculation. When the insurance policy provides for the adjustment and settlement of first-party automobile total losses on the basis of actual cash value or replacement with another automobile of like kind and quality, one of the following methods shall apply:

(1) The insurer may elect to offer a replacement automobile that is at least comparable in that it will be by the same manufacturer, same or newer year, similar body style, similar options and mileage as the insured vehicle and in as good or better overall condition and available for inspection at a licensed dealer within a reasonable distance of the insured's residence. All applicable taxes, license fees and other fees incident to the transfer of evidence of ownership of the auto-

mobile shall be paid by the insurer, at no cost to the insured, other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be derived from:

1. The cost of two or more comparable automobiles in the local market area when comparable automobiles are available or were available within the last 90 days to consumers in the local market area; or

2. The cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90 days to consumers when comparable automobiles are not available in the local market area; or

3. One of two or more quotations obtained by the insurer from two or more licensed dealers located within the local market area when the cost of comparable automobiles is not available; or

4. Any source for determining statistically valid fair market values that meet all of the following criteria:

- The source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area.

- The source's database shall produce values for at least 85 percent of all makes and models for the last 15 model years taking into account the values of all major options for such vehicles.

- The source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters (such as time and area) to ensure statistical validity.

(3) If the insurer is notified within 35 days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle for such market value, the insured shall have a right of recourse. The insurer shall reopen its claim file and the following procedure(s) shall apply:

1. The insurer may locate a comparable vehicle by the same manufacturer, same or newer year, similar body style and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. Any such vehicle must be available through a licensed dealer; or

2. The insurer shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured; or

3. The insurer may elect to offer a replacement in accordance with the provisions set forth in subrule 15.43(1); or

4. The insurer may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or a common law.

The insurer is not required to take action under this subrule if its documentation to the insured at the time of settlement included written notification of the availability and location of a specified and comparable vehicle of the same manufac-

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turer, same or newer year, similar body style and similar options in as good or better condition as the total-loss vehicle which could have been purchased for the market value determined by the insurer before applicable deductions. The documentation shall include the vehicle identification number.

b. Deviation. When a first-party automobile total loss is settled on a basis which deviates from the methods described in paragraph "a," the deviation must be supported by documentation giving particulars of the automobile's condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first-party claimant.

15.43(2) Where liability and damages are reasonably clear, an insurer shall not recommend that third-party claimants make claims under their own policies solely to avoid paying claims under the insurer's policy.

15.43(3) The insurer shall not require a claimant to travel an unreasonable distance either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

15.43(4) The insurer shall, upon the claimant's request, include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses shall be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro-rata share of the allocated loss adjustment expense.

15.43(5) Vehicle repairs. If partial losses are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall (1) pay the difference between the written estimate and a higher estimate obtained by the insured, or (2) promptly provide the insured with the name of at least one repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one or two such repair shops, the insurer shall ensure that the repairs are performed according to automobile industry standards. The insurer shall maintain documentation of all such communications.

15.43(6) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

15.43(7) When the insurer elects to repair an automobile, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy, within a reasonable period of time.

15.43(8) Storage and towing. The insurer shall provide reasonable notice to an insured prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the insured to remove the vehicle from storage prior to the termination of payment. Unless the insurer has provided an insured with the name of a specific

towing company prior to the insured's use of another towing company, the insurer shall pay all reasonable towing charges.

15.43(9) Betterment. Betterment deductions are allowable only if the deductions reflect a measurable decrease in market value attributable to the poorer condition of, or prior damage to, the vehicle. Betterment deductions must be measurable, itemized, specified as to dollar amount and documented in the claim file.

15.43(10) Diminished value. In the case of a third-party claim for repair of a vehicle, diminished value shall be considered as an additional measure of damages if the repairs did not fully restore the vehicle to its preaccident condition as measured by market value. Each insurer shall maintain a system of supervision and control to ensure compliance with this subrule.

191—15.44(507B) Standards for determining replacement cost and actual cost values.

15.44(1) Replacement cost. When the policy provides for the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:

a. When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment or any other cost except for the applicable deductible.

b. When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace as much of the item as is necessary to result in a reasonably uniform appearance within the same line of sight. This subrule applies to interior and exterior losses. Exceptions may be made on a case-by-case basis. The insured shall not bear any cost over the applicable deductible, if any.

15.44(2) Actual cash value.

a. When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine the actual cash value. "Actual cash value" means replacement cost of property at time of loss, less depreciation, if any. Alternatively, an insurer may use market value in determining actual cash value. Upon the insured's request, the insurer shall provide a copy of the claim file worksheet(s) detailing any and all deductions for depreciation.

b. In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth above is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

15.44(3) Applicability. This rule does not apply to automobile insurance claims.

ITEM 28. Amend renumbered rule 191—15.45(507B) as follows:

191—15.45(507B) Use Guidelines for use of aftermarket crash parts in automobile insurance policies—notice required motor vehicles.

15.45(1) Identification. All aftermarket crash parts supplied for use in this state shall comply with the identification requirements of Iowa Code section 537B.4.

15.45(2) Like kind and quality. An insurer shall not require the use of aftermarket crash parts in the repair of an automobile unless the aftermarket crash part is certified by a nationally recognized entity to be at least equal in kind and

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quality to the original equipment manufacturer part in terms of fit, quality and performance, or that the part complies with federal safety standards.

15.45(1.3) Contents of notice. Any automobile insurance policy delivered in this state that pays benefits based on the cost of aftermarket crash parts as defined in Iowa Code chapter 537B or that requires the insured to pay the difference between the cost of original equipment manufacturer parts and the cost of aftermarket crash parts shall include a notice which contains and is limited to the following language:

NOTICE—PAYMENT FOR AFTERMARKET CRASH PARTS

Physical damage coverage under this policy includes payment for aftermarket crash parts. If you repair the vehicle using more expensive original equipment manufacturer (OEM) parts, you may pay the difference. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

15.45(2.4) No change.

ITEM 29. Reserve rules **191—15.46 to 15.50**.

ITEM 30. Adopt new Division III as follows:

DIVISION III

DISCLOSURE FOR SMALL FACE AMOUNT

LIFE INSURANCE POLICIES

191—15.51(507B) Purpose. The purpose of these rules is to ensure the provision of meaningful information to the purchasers of small face amount life insurance policies. The rules in this division apply to all small face amount policies not exempted under rule 15.53(507B) that are issued on or after July 1, 2004.

191—15.52(507B) Definition. “Small face amount policy” means a life insurance policy or certificate with an initial face amount of \$15,000 or less.

191—15.53(507B) Exemptions. These rules apply to all group and individual life insurance policies and certificates except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance;
4. Group or individual policies of life insurance issued to members of an employer group or other permitted group when:
 - Every plan of coverage was selected by the employer or other group representative;
 - Some portion of the premium is paid by the group or through payroll deduction; and
 - Group underwriting or simplified underwriting is used; and
5. Policies and certificates where an illustration has been provided pursuant to the requirements of 191—Chapter 14.

191—15.54(507B) Disclosure requirements.

15.54(1) An insurer issuing a small face amount policy shall provide the disclosure included in Appendix IV if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy, but may be delivered with the policy.

15.54(2) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

- a. Provide the disclosure only in those circumstances when the premiums may exceed the face amount; or
- b. Provide the disclosure for all demographic and benefit combinations.

15.54(3) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

191—15.55(507B) Insurer duties. The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement.

191—15.56 to 15.60 Reserved.

ITEM 31. Adopt new Division IV, consisting of the NAIC Annuity Disclosure Model Regulation, as follows:

DIVISION IV

ANNUITY DISCLOSURE REQUIREMENTS

191—15.61(507B) Purpose. The purpose of these rules is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and to foster consumer education. The rules specify the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of these rules is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts. The rules in this division apply to all annuities not exempted under rule 15.62(507B) that are issued on or after July 1, 2004.

191—15.62(507B) Applicability and scope. These rules apply to all group and individual annuity contracts and certificates except:

15.62(1) Registered or nonregistered variable annuities or other registered products;

15.62(2) Immediate and deferred annuities that contain no nonguaranteed elements;

15.62(3) Annuities used to fund:

- a. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
- b. A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
- c. A governmental or church plan defined in Section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or
- d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

This subrule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subrule, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

15.62(4) Structured settlement annuities; and

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15.62(5) Charitable gift annuities as defined in Iowa Code chapter 508F.

191—15.63(507B) Definitions. For purposes of these rules: “Contract owner” means the owner named in the annuity contract or the certificate holder in the case of a group annuity contract.

“Determinable elements” means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after the contract is issued. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges, or elements of formulas used to determine any of these elements. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

“Generic name” means a short title descriptive of the annuity contract for which application is made or an illustration is prepared, such as “single premium deferred annuity.”

“Guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges, or elements of formulas used to determine any of these elements, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

“Nonguaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges or elements of formulas used to determine any of these elements, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

“Structured settlement annuity” means a “qualified funding asset” as defined in Section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

191—15.64(507B) Standards for delivery of disclosure document and Buyer’s Guide.

15.64(1) Delivery requirement. When an insurer or an insurance producer receives an application for an annuity contract, the insurer or insurance producer shall provide the applicant the disclosure document described in rule 191—15.65(507B) and the Buyer’s Guide to Fixed Deferred Annuities, hereafter “the Buyer’s Guide,” in the current form prescribed by the National Association of Insurance Commissioners or in language approved by the commissioner of insurance.

15.64(2) Delivery methods. The documents required under this rule may be delivered as follows:

- a. When an application for an annuity contract is taken in a face-to-face meeting with an insurance producer, the insurance producer shall provide the disclosure document and the Buyer’s Guide at or before the time of application.
- b. When an application for an annuity contract is taken by means other than a face-to-face meeting, the insurer shall send the applicant both the disclosure document and the Buyer’s Guide no later than five business days after the completed application is received by the insurer.
- c. When an application is received as a result of direct solicitation through the mail, the insurer may provide the Buyer’s Guide and the disclosure document in the mailing

which invites prospective applicants to apply for an annuity contract.

d. When an application is received via the Internet, the insurer may comply with this rule by taking reasonable steps to make the Buyer’s Guide and disclosure document available for viewing and printing on the insurer’s Web site.

15.64(3) A solicitation for an annuity contract which occurs other than in a face-to-face meeting shall include a statement that the proposed applicant may contact the Iowa insurance division for a free annuity Buyer’s Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer’s Guide.

15.64(4) When the Buyer’s Guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under the state law or rule.

191—15.65(507B) Content of disclosure documents. Insurers shall define terms used in the disclosure statement in language that facilitates understanding by a typical individual within the segment of the public to which the disclosure statement is directed. At a minimum, the following information shall be included in the disclosure document:

15.65(1) The generic name of the contract, the company product name, if different, and form number and the fact that it is an annuity;

15.65(2) The insurer’s name and address;

15.65(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate, including but not limited to:

- a. The guaranteed, nonguaranteed and determinable elements of the contract, and the limitations of those elements, if any, and an explanation of how the elements and limitations operate;
- b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
- c. Periodic income options both on a guaranteed and nonguaranteed basis;
- d. Any value reductions caused by withdrawals from or surrender of the contract;
- e. How values in the contract can be accessed;
- f. The death benefit, if available, and how it will be calculated;
- g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
- h. Impact of any rider, such as a long-term care rider;

15.65(4) Specific dollar amount or percentage charges and fees, listed with an explanation of how they apply; and

15.65(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

191—15.66(507B) Report to contract owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

1. The beginning and ending date of the current report period;

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2. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

3. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

4. The amount of outstanding loans, if any, as of the end of the current report period.

191—15.67(507B) Severability. If any provision of these rules or their application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rule and its application to other persons or circumstances shall not be affected.

ITEM 32. Rescind 191—Chapter 15, **Appendix II**, and renumber **Appendixes III** and **IV** as **II** and **III**.

ITEM 33. Adopt new 191—Chapter 15, Appendix IV, as follows:

Appendix IV

DISCLOSURE FORM FOR SMALL FACE AMOUNT
LIFE INSURANCE POLICIES**Important Information About Your Policy**

The premiums you'll pay for your policy may be more than the amount of your coverage (the face amount). You can find both the face amount and the annual premium in your policy. Look for the page labeled [use the label the company uses for that information, such as "Statement of Policy Cost and Benefit Information"].

- Usually, you can figure out how many years it will take until the premiums paid will be greater than the face amount. For an estimate, divide the face amount by the annual premium. Several factors may affect how many years this might take for *your* policy. These include not paying premiums when due, taking out a policy loan, surrendering your policy for cash, policy riders, payment of dividends, if applicable, and changes in the face amount.

- Many factors will affect how much your life insurance costs. Some are your age and health, the face amount of the policy, and the cost of a policy rider. You may be able to pay less for your insurance if you answer health questions. You may also pay less if you pay your premiums less often.

- Ask your insurance agent or your insurance company if you have any questions about your premiums, your coverage, or anything else about your policy.

If You Change Your Mind ...

- You can get a full refund of premiums you've paid if you return your policy and cancel your coverage. You *must* do this within the number of days stated on your policy's front page. To return the policy for a full refund, send it back to the agent or the company.
- If you stop paying premiums or cancel your policy *after* the time that a full refund is available, you have specific rights. Ask your insurance agent or your insurance company about your rights.

Contact Information

If you have questions about your insurance policy, ask your agent or your company. If your agent isn't available, contact your insurance company at [provide telephone number (including toll-free number if available), address and Web site (if available)].

[Filed 7/3/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2613B**PERSONNEL DEPARTMENT[581]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, "Iowa Public Employees' Retirement System," appearing in the Iowa Administrative Code.

This amendment clarifies the process for reviewing applications for membership on the IPERS Benefits Advisory Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2509B**.

A public hearing was held on June 17, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. No parties attended the public hearing. No written comments were received prior to the hearing. The amendment is identical to that published under Notice.

This amendment was prepared after consultation with the IPERS legal, accounting and benefits units.

There is no waiver provision included in the amendment because it removes a limitation.

This amendment is intended to implement Iowa Code chapter 97B.

This amendment will become effective August 27, 2003. The following amendment is adopted.

Amend subrule 21.33(4) as follows:

21.33(4) Replacement or expansion of membership organizations. A membership organization must be a unit of the executive branch or a formally organized corporation or association representing a viable and identifiable group of covered employers or covered employees as determined by the BAC in its sole discretion.

An organization that wishes to replace an existing membership organization may petition the BAC at any time to do

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so. If the BAC determines that there are two organizations that meet the foregoing requirements and purport to represent the same group of covered employers or employees, the board seat shall be awarded to the organization representing the largest number of employer or employee constituents, as applicable.

An organization that would qualify as a membership organization under this subrule may also, in lieu of replacing an existing membership organization, petition the BAC to increase the number of membership organizations listed in subrule 21.33(3) to include that organization.

Beginning March 2005 and every three years thereafter, the BAC will review new applications for replacement or expansion of membership organizations. The applications will be reviewed by a subcommittee that will offer recommendations to the full BAC for consideration at the March meeting before the end of each three-year period.

This subrule shall not be construed to affect the board positions reserved for the director of the department of personnel or the position reserved for a citizen who has substantial pension benefits experience and who is not a member of IPERS.

[Filed 6/27/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2627B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby amends Chapter 131, "Licensure of Massage Therapists"; rescinds Chapter 132, "Massage Therapy Education Curriculum," and adopts new Chapter 132 with the same title; amends Chapter 133, "Continuing Education for Massage Therapists"; and amends Chapter 135, "Fees," Iowa Administrative Code.

These amendments update the rules covering Board-approved massage therapy curriculum courses, amend the definition of "massage therapy" to be consistent with the definition stated in Iowa Code section 152C.1, amend subrule 131.2(6) regarding completion of CPR and first-aid classes to be eligible for licensure in Iowa, and amend the requirement concerning continuing education programs that are excluded from Board approval. An application fee is proposed to cover the cost of processing initial applications for curriculum approval.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2412B**. A public hearing was held on May 8, 2003, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. The Board received numerous written comments on the proposed amendments and worked with the massage therapy schools to address their concerns before adopting the amendments. The following revisions are based on those comments.

- Rule 645—132.3(152C) is reformatting and revised to address public concerns about schools' practice of using

guest instructors to teach specific massage therapy modalities.

- In subrule 132.3(2), the number of semester hours of accredited college level coursework in anatomy and physiology is reduced from nine semester hours to eight semester hours.

- Subparagraph (1) of paragraph 132.4(1)"c" is reformatting and revised to address the concerns of schools if the curriculum is delivered in a modular format. Because of this revision, a definition of "modular format" is added to rule 645—132.1(152C).

- Subrule 132.4(5) is revised to clarify that a school shall be subject to disciplinary action if the school is not providing the courses and hours submitted on the approved application.

- The amendment to paragraph "e" of subrule 133.3(2) is revised to clarify that modalities that focus primarily on emotions or energy are excluded from Board approval.

These amendments were adopted by the Board of Examiners for Massage Therapy on June 3, 2003.

These amendments will become effective August 27, 2003.

These amendments are intended to implement Iowa Code chapters 147, 152C and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—131.1(152C)**, definition of "massage therapy," as follows:

"Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

ITEM 2. Rescind subrule 131.2(6) and adopt the following **new** subrule in lieu thereof:

131.2(6) The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross or by the American Heart Association. One of the following shall be required:

- Official transcript documenting completion of a CPR class and a first-aid class within one year prior to submitting the application for licensure; or
- Copy of the current certification card(s) or renewal card(s).

ITEM 3. Rescind 645—Chapter 132 and adopt **new** 645—Chapter 132 in lieu thereof:

CHAPTER 132

MASSAGE THERAPY EDUCATION CURRICULUM

645—132.1(152C) Definitions.

"Approved curriculum" means that the massage therapy education course of study meets the criteria specified in this chapter and has been approved by the board of examiners for massage therapy.

"Board" means the board of examiners for massage therapy.

"Client" means any person with whom the school has an agreement to provide massage therapy.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Clinical practicum" means hands-on massage therapy provided to members of the public by a student enrolled at a massage therapy school who is under the supervision of an instructor who is an Iowa-licensed massage therapist. The instructor shall be physically present on the premises and available for advice and assistance. Clinical practicum does not include classroom practice.

"Course of study" means a series of classroom courses, not including continuing education, which is approved by the board as having a unified purpose in training individuals toward a certificate, degree or diploma in the practice of massage therapy.

"Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

"Modular format" means the delivery of a course of study in concentrated segments or modules focusing on one aspect or modality per module.

645—132.2(152C) Application for approval of massage therapy education curriculum.

132.2(1) Application forms for schools providing massage therapy education curriculum must be obtained directly from the board office. Applications and fees shall be submitted to the Board of Examiners for Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The following information shall be submitted with the application:

a. Letter from the school that lists the names of all course instructors and includes a statement certifying that all instructors meet the criteria stated in rule 645—132.3(152C).

b. Class schedule in a clear format documenting the number of hours each subject will be taught. The course of study used by the program shall be the same as the published class schedule.

c. Syllabus that describes each course and that includes the following information:

- (1) Title of course;
- (2) Instructor's name;
- (3) Daily class schedule that shows the daily outline of the hours taught per day;
- (4) Total hours associated with each subject;
- (5) Description of course;
- (6) Textbooks and resource or supplement references; and
- (7) Grading system and testing schedule.

132.2(2) The application shall be completed according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

645—132.3(152C) Requirements for instructors.

132.3(1) Instructors of massage therapy, which include instructors of clinical and practical labs.

a. Instructors of massage therapy shall hold a current Iowa license to practice massage therapy, pursuant to Iowa Code section 152C.5, and shall have a minimum of two years of practical experience for each assigned course and modality prior to being hired as an instructor.

b. Guest instructors of massage therapy shall have a minimum of two years of practical experience for each assigned course and modality prior to being hired as an instructor and shall meet one of the following requirements:

- (1) Hold an Iowa massage therapy license;
- (2) Hold a massage therapy license in another state or jurisdiction; or
- (3) Have professional preparation equivalent to or exceeding the requirements for an Iowa license to practice massage therapy.

132.3(2) Anatomy and physiology instructors shall complete a minimum of eight semester hours of accredited college level coursework in anatomy and physiology.

132.3(3) Instructors who are teaching board-approved massage therapy courses prior to October 1, 2003, shall not be required to meet the requirements of subrules 132.3(1) and 132.3(2) until October 1, 2004.

132.3(4) The school shall maintain records that show that instructors meet the criteria of rule 645—132.3(152C) and, upon request, shall make the records available to the board. The records shall be retained for two years after the resignation of the instructor.

645—132.4(152C) Curriculum requirements.

132.4(1) The approved curriculum shall include a minimum of 500 hours of supervised on-site instruction and shall be comprised of the following hours of specific instruction:

a. A minimum of 200 hours in the fundamental theory and in the practice of massage, which shall include client assessment skills, indications and contraindications for treatment, massage techniques, and application of hands-on methods;

b. A minimum of 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies;

c. A minimum of 200 hours of other subjects relating directly to the development of skills and knowledge necessary to render competent professional massage therapy to the public, including hygiene and sanitation. The clinical practicum may be included in these 200 hours.

(1) Students must complete one of the following requirements before working on clients in a clinical practicum:

1. 200 hours of the course of study; or
2. 40 percent of the course of study for each specific massage technique if the school's curriculum is delivered via a modular format that has been approved by the board. The required 40 percent shall include client assessment skills, indications and contraindications for treatment and massage techniques.

(2) Clinical practicum hours must be on site and supervised by an instructor who is an Iowa-licensed massage therapist.

(3) Clinical practicum hours shall not exceed 20 percent of the total curriculum hours.

132.4(2) Students shall not receive credit for hours unless the hours were earned in the study or practice of massage therapy in accordance with the approved curriculum.

132.4(3) New course offerings shall not alter any minimum requirements and shall be approved by the board prior to implementation.

132.4(4) The school shall maintain a copy of the board-approved curriculum plan during implementation of the plan and for two additional years following the discontinuance of the plan.

132.4(5) The school shall be subject to disciplinary action if the school is not providing the courses and hours submitted on the approved application. After the school has complied

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

with the discipline imposed by the board, the school may reapply for approval of a massage therapy curriculum according to the rules in effect at the time of the reapplication.

132.4(6) Upon completion of training, the student shall be given a certificate, diploma, or degree indicating that the student satisfactorily completed the required course of study.

132.4(7) A student shall be given a periodic evaluation covering the course content. A student's final average shall be no less than 70 percent. Records documenting the student's attendance and completion of the curriculum shall be maintained for two years following graduation.

132.4(8) The program shall provide an official transcript for each student, which shall include the student's legal name, date of birth, social security number, date of entrance to the program and completion date.

These rules are intended to implement Iowa Code chapter 152C.

ITEM 4. Amend subrule **133.3(2)**, paragraph "e," as follows:

e. Excluded from approval are programs involving modalities listed but not limited to: Alexander Techniques *Technique*, Barbara Brennan Healing Sciences, Breema Bodywork, Feldenkrais, Healing Touch, Jin Shin Jyutsu, Reiki, Rosen Method, Therapeutic Touch, and Trager Approach and Zero Balancing. Also excluded are other modalities which involve focus primarily on emotions or energy.

ITEM 5. Adopt new subrule 135.1(10) as follows:

135.1(10) Initial application fee for approval of massage therapy education curriculum is \$100.

[Filed 7/3/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2630B

PROFESSIONAL LICENSURE
DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby amends Chapter 350, "Administrative and Regulatory Authority for the Board of Athletic Training Examiners," and rescinds Chapter 353, "Discipline for Athletic Trainers," Iowa Administrative Code, and adopts new Chapter 353 with the same title.

The amendments simplify the procedure for notifying the Board of a change of the licensee's name or address, adopt new subrules covering the conduct of persons who attend public meetings, and adopt a new discipline chapter which contains standard language consistent with other boards' requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2411B**. A public hearing was held on May 8, 2003, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

The following changes have been made to the Notice of Intended Action:

- Amendments to subrules 350.4(2) and 350.4(3) have been adopted for consistency with office procedures that are

being implemented for all boards regulated by the Division of Professional Licensure. The amendments simplify the procedure for licensees who notify the Board of a change of the licensee's name or address.

- The term "licensee discipline" has been changed to "discipline," and the definition has been revised for consistency with the wording of the definition in other discipline chapters.

- Subrule 353.2(14) is revised to include the words "of this state" to ensure that grounds for discipline include revocation, suspension, or other disciplinary actions taken by a licensing authority in this state as well as another state, territory, or country.

- Other nonsubstantive, editorial changes have been made for clarification in the following: subrules 353.2(1), 353.2(20), 353.2(24), and 353.2(27) and paragraph "1" of rule 645—353.4(272C).

These amendments were adopted by the Board of Athletic Training Examiners on June 17, 2003.

These amendments will become effective August 27, 2003.

These amendments are intended to implement Iowa Code chapters 17A, 21, 147, 152D and 272C.

The following amendments are adopted.

ITEM 1. Amend subrules 350.4(2) and 350.4(3) as follows:

350.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

350.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing of any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend rule **645—350.6(17A)**, parenthetical implementation, as follows:

(17A 21)

ITEM 3. Adopt new subrules 350.6(3) and 350.6(4) as follows:

350.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

350.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 350** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 152D and 272C.

ITEM 5. Rescind **645—Chapter 353** and adopt the following new chapter in lieu thereof:

CHAPTER 353

DISCIPLINE FOR ATHLETIC TRAINERS

645—353.1(152D) Definitions.

"Board" means the board of athletic training examiners.

"Discipline" means any sanction the board may impose upon licensees.

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"Licensee" means a person licensed to practice as an athletic trainer in Iowa.

645—353.2(152D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—353.3(152D,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

353.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

353.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other athletic trainers in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average athletic trainer acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed athletic trainer in this state.

353.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

353.2(4) Practice outside the scope of the profession.

353.2(5) Use of untruthful or improbable statements in advertisements. The use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

353.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

353.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

353.2(8) Falsification of client or patient records.

353.2(9) Acceptance of any fee by fraud or misrepresentation.

353.2(10) Misappropriation of funds.

353.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including improper delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

353.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice as an athletic trainer. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

353.2(13) Violation of a regulation, rule or law of this state, another state, or the United States, which relates to the practice of athletic training.

353.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

353.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of athletic training in another state, district, territory or country.

353.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

353.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

353.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

353.2(19) Failure to respond within 30 days to a communication of the board which was sent by registered or certified mail.

353.2(20) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

353.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

353.2(22) Failure to pay costs assessed in any disciplinary action.

353.2(23) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

353.2(24) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

353.2(25) Knowingly aiding, assisting, or advising a person to unlawfully practice as an athletic trainer.

353.2(26) Failure to report a change of name or address within 30 days after the occurrence.

353.2(27) Representing oneself as a licensed athletic trainer when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

353.2(28) Permitting another person to use the licensee's license for any purpose.

353.2(29) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

353.2(30) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient or client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

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- d. Engaging in a professional conflict of interest.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- f. Being adjudged mentally incompetent by a court of competent jurisdiction.

353.2(31) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

645—353.3(152D,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

- 1. Revocation of license.
- 2. Suspension of license until further order of the board or for a specific period.
- 3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
- 4. Probation.
- 5. Require additional education or training.
- 6. Require a reexamination.
- 7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
- 8. Impose civil penalties not to exceed \$1000.
- 9. Issue a citation and warning.
- 10. Such other sanctions allowed by law as may be appropriate.

645—353.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- 1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;
- 2. The facts of the particular violation;
- 3. Any extenuating facts or other countervailing considerations;
- 4. The number of prior violations or complaints;
- 5. The seriousness of prior violations or complaints;
- 6. Whether remedial action has been taken; and
- 7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 152D and 272C.

[Filed 7/2/03, effective 8/27/03]

[Published 7/23/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2621B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.8, and 476.41 to 476.45, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292, the Utilities Board (Board) gives notice that on June 27, 2003, the Board issued an order in Docket No. RMU-03-4, In re: Alternate Energy Production, "Order Adopting Rules." The Board is adopting revisions to 199 IAC 15 and 199 IAC 20.9(2)"b"(6)

in response to Governor Vilsack's Executive Orders 8 and 9 and to simplify and clarify the rules related to alternate energy production.

On February 12, 2003, the Board issued an order in Docket No. RMU-03-4 to consider the amendments. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 18 (3/5/03), p. 1207, **ARC 2329B**. The Consumer Advocate Division of the Department of Justice, Interstate Power and Light Company (IPL), and MidAmerican Energy Company (MidAmerican) filed initial written comments. An oral presentation was held on May 16, 2003. IPL supplemented its written comments after the oral presentation and the Iowa Association of Electric Cooperatives filed a reply to some of the comments filed by IPL and MidAmerican.

The Board will not detail here the reasons for adopting the amendments because those reasons have been delineated in the Board's order referred to above. This order is available at the Board's Web site, <http://www.state.ia.us/iub>. This order is also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

The changes to the noticed amendments are in response to the comments or are minor, such that the Board believes no additional notice is required. There is no specific waiver provision in the adopted rules because the Board's general waiver rule, 199 IAC 1.3(17A,474,476,78GA,HF2206), is applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1, 476.8, and 476.41 to 476.45, Section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

These amendments will become effective August 27, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 199—15.1(476) as follows:

199—15.1(476) Definitions. Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601, et seq., shall have the same meaning for purposes of these rules as they have under PURPA, unless further defined in this chapter.

"AEP facility" means any of the following: (1) an electric production facility which derives 75 percent or more of its energy input from solar energy, wind, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or wood burning; (2) a hydroelectric facility at a dam; (3) land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or (4) transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

"Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

"Backup power" means electric energy or capacity supplied by an electric utility to qualifying facilities and AEP facilities to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

"Board" means the Iowa utilities board.

"Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution,

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safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility *facilities and AEP facilities*, to the extent the costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

"Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

"Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility *facilities and AEP facilities*.

"Next generating plant" means the utility's assumed next coal-fired base load electric generating plant, whether currently planned or not, based on current technology and undiscounted current cost.

"Purchase" means the purchase of electric energy or capacity or both from a qualifying facility *facilities and AEP facilities* by an electric utility.

"Qualifying alternate energy production facility" means any of the following:

1.—An electric production facility which derives 75 percent or more of its energy input from solar energy, wind, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or wood burning;

2.—Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or

3.—Transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

A facility which is a qualifying facility under 18 CFR Part 292, Subpart B, is not precluded from being an alternate energy production facility.

"Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B.

"Qualifying small hydro facility" means any of the following:

1.—A hydroelectric facility at a dam;

2.—Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion or operation of the facility; or

3.—Transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

A facility which is a qualifying facility under 18 CFR Part 292, Subpart B, is not precluded from being a small hydro facility.

"Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

"Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility *facilities and AEP facilities*.

"Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility *facilities and AEP facilities* in addition to that which the facility generates itself.

"System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

ITEM 2. Amend rule 199—15.2(476) as follows:

199—15.2(476) Scope.

15.2(1) Applicability.

a. Subrule 15.2(2) and rules 199—15.3(476) and rule 199—15.10(476) of this chapter apply to all electric utilities, and to all qualifying facilities, all qualifying alternate energy production facilities, and all qualifying small hydro and all AEP facilities.

b. Rule 199—15.3(476) of this chapter applies to electric utilities which are subject to rate regulation by the board.

b c. Rules 199—15.4(476) to and 199—15.9 5(476) of this chapter apply only to the regulation of sales and purchases between qualifying facilities and electric utilities which are subject to rate regulation by the board.

d. Rules 199—15.6(476) to 199—15.9(476) of this chapter apply to all qualifying facilities and AEP facilities, and electric utilities which are subject to rate regulation by the board.

e e. Rules Rule 199—15.11(476) to 199—15.16(476) of this chapter lists additional requirements that apply only to the regulation of sales and purchases between qualifying alternate energy production or small hydro AEP facilities, and electric utilities which are subject to rate regulation by the board, pursuant to Iowa Code sections 476.41 to 476.45.

15.2(2) Negotiated rates or terms. These rules do not:

a. Limit the authority of any electric utility, any qualifying facility, any qualifying alternate energy production facility, or any qualifying small hydro AEP facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by these rules; or

b. Affect the validity of any contract entered into between an electric utility and either a qualifying facility, a qualifying alternate energy production facility, or a qualifying small hydro AEP facility, for any purchase.

ITEM 3. Amend rule 199—15.3(476) as follows:

199—15.3(476) Information to board. In addition to the information required to be supplied to the board under 18 CFR 292.302, all rate-regulated electric utilities shall supply to the board copies of contracts executed for the purchase or sale, for resale, of energy or capacity. If the purchases or sales are made other than pursuant to the terms of a written contract, then information as to the relevant prices and conditions shall be supplied to the board. All information required to be supplied under this rule shall be filed with the board by May 1 and November 1 of each year, for all transactions occurring since the last filing was made.

ITEM 4. Amend rules 199—15.6(476) through 199—15.9(476) as follows:

199—15.6(476) Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities. For purposes of this rule, "utility" means a rate-regulated electric utility. Rates for sales to qualifying facilities and AEP facilities shall be just, reasonable and in the public interest, and shall not discriminate against the qualifying facility *facilities and AEP facilities* in comparison to rates for sales to other customers with similar load or other cost-related characteristics served by the utility. The rate for sales of backup or maintenance power shall not be based upon an assumption (unless sup-

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ported by data) that forced outages or other reductions in electric output by all qualifying facilities *and AEP facilities* will occur simultaneously or during the system peak, or both, and shall take into account the extent to which scheduled outages of the qualifying *facility facilities and AEP facilities* can be usefully coordinated with scheduled outages of the utility's facilities.

199—15.7(476) Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities. For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.

15.7(1) Upon request of a qualifying *facility facilities and AEP facilities*, each electric utility shall provide supplementary power, backup, maintenance power, and interruptible power. Rates for such service shall meet the requirements of subrule 15.5(6), and shall be in accordance with the terms of the utility's tariff.

The board may waive this requirement pursuant to rule 199—1.3(17A,474) only after notice in the area served by the utility and an opportunity for public comment. The waiver may be granted if compliance with this rule will:

a. Impair the electric utility's ability to render adequate service to its customers, or

b. Place an undue burden on the electric utility.

15.7(2) Reserved.

199—15.8(476) Interconnection costs. For purposes of this rule, "utility" means a rate-regulated electric utility.

15.8(1) Each qualifying *facility Qualifying facilities and AEP facilities* shall be obligated to pay any interconnection costs, as defined in this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics.

15.8(2) Utilities shall be reimbursed by the qualifying *facility facilities and AEP facilities* for interconnection costs at the time the costs are incurred. Upon petition by any party involved and for good cause shown, the board may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the board may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection.

199—15.9(476) System emergencies. For purposes of this rule, "electric utility" means a rate-regulated electric utility. A qualifying *facility Qualifying facilities and AEP facilities* shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

15.9(1) Provided by agreement between the qualifying *facility or AEP facility and the electric utility*; or

15.9(2) Ordered under Section 202(c) of the Federal Power Act. During any system emergency, an electric utility may immediately discontinue:

a. Purchases from a qualifying *facility facilities and AEP facilities* if purchases would contribute to the emergency; and

b. Sales to a qualifying *facility facilities and AEP facilities*, provided that the discontinuance is on a nondiscriminatory basis.

ITEM 5. Amend rule 199—15.10(476) as follows:

199—15.10(476) Standards for interconnection, safety, and operating reliability. For purposes of this rule, "electric utility" or "utility" means both rate-regulated and non-rate-regulated electric utilities.

15.10(1) Acceptable standards. Qualifying facilities, ~~qualifying alternate energy production facilities, and qualifying small hydro AEP facilities~~ shall all meet the applicable

provisions in the publications listed below in order to be eligible for interconnection to an electric utility system:

a. General Requirements for Synchronous Machines, ANSI C50.10-1990.

b. Requirements for Salient Pole Synchronous Generators and Condensers, ANSI C50.12-1982.

c. Requirements for Cylindrical-Rotor Synchronous Generators, ANSI C50.13-1982 1989.

d. Requirements for Combustion Gas Turbine Driven Cylindrical-Rotor Synchronous Generators, ANSI C50.14-1977.

e. Iowa Electrical Safety Code, as defined in 199—Chapter 25.

f. National Electrical Code, ANSI/NFPA 70-2002.

g. *IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.*

For those facilities which are of such design as to not be subject to the standards noted in "a," "b," "c," and "d," above, data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility for review and approval prior to interconnection. A copy of the utility decision (whether approving or disapproving), including the data specified above and the exact location of the facility, shall be filed with the board within one week of the date of the decision. The utility decision, or its failure to decide within a reasonable time, may be appealed to the board. The appeal shall be treated as a contested case proceeding.

15.10(2) Modifications required. The standards set forth in ANSI C50.10 are modified as follows:

a. Rule 8.1 "Maximum allowable deviation factor," is modified to read: "The deviation factor of the open-circuit terminal voltage wave and the current wave at all loads shall not exceed 0.1. Deviation factor shall be as defined in ANSI C42.100-1972."

15.10(3) Interconnection facilities. Interconnections between qualifying facilities (or ~~qualifying alternate energy production facilities, or qualifying small hydro AEP facilities~~) and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

a. The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position.

b. The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

c. Facilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

d. Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

15.10(4) Access. Both the operator of the qualifying facility (or ~~qualifying alternate energy production facility, or qualifying small hydro AEP facility~~) and the utility shall have access to the interconnection switch at all times.

UTILITIES DIVISION[199](cont'd)

15.10(5) Inspections. The operator of the qualifying facility (or ~~qualifying alternate energy production facility, or qualifying small hydro AEP facility~~) shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing.

15.10(6) Emergency disconnection. In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility (or ~~qualifying alternate energy production facility, or qualifying small hydro AEP facility~~) by written notice and, where possible, verbal notice as soon as practicable after the ~~disconnection~~ *disconnections*; and shall notify the electric engineering section of the bureau of rate and safety evaluation of the board by the next working day. If the facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the facility or the utility upon filing of a petition.

ITEM 6. Rescind rule 199—15.11(476) and adopt the following **new** rule in lieu thereof:

199—15.11(476) Additional rate-regulated utility obligations regarding AEP facilities. For purposes of this rule, “MW” means megawatt, “MWH” means megawatt-hour, and “utility” means a rate-regulated electric utility.

15.11(1) Obligation to purchase from AEP facilities. Each utility shall purchase, pursuant to contract, its share of at least 105 MW of AEP generating capacity and associated energy production. The utility’s share of 105 MW is based on the utility’s estimated percentage share of Iowa peak demand, which is based on the utility’s highest monthly peak shown in its 1990 FERC Form 1 annual report, and on its related Iowa sales and total company sales and losses shown in its 1990 FERC Form 1 and IE-1 annual reports. Each utility’s share of the 105 MW is determined to be as follows:

	Percentage Share of Iowa Peak	Utility Share of 105 MW
Interstate Power and Light	47.43%	49.8 MW
MidAmerican Energy	52.57%	55.2 MW

A utility is not required to purchase from an AEP facility that is not owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following: (1) is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from AEP facilities; and (2) does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

15.11(2) Purchases pursuant to a legally enforceable obligation. Each AEP facility shall provide electricity on a best-efforts basis pursuant to a legally enforceable obligation for the delivery of electricity over a specified contract term.

15.11(3) Annual reporting requirement. Beginning April 1, 2004, each utility shall file an annual report listing nameplate MW capacity and associated monthly MWH purchased from AEP facilities, itemized by AEP facility.

15.11(4) Tariff filings. The electric utility shall maintain a tariff schedule of standard AEP contract provisions offered. The initial tariffs and subsequent revisions shall be subject to board approval. Provisions of any individual AEP contract which differ from or exceed the utility tariff of standard AEP contract provisions shall also be subject to board approval, unless otherwise agreed upon by the individual AEP facility and utility.

15.11(5) Net metering. Each utility shall offer to operate in parallel through net metering (with a single meter monitoring only the net amount of electricity sold or purchased) with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules.

In the alternative, by choice of the facility, the utility and facility shall operate in a purchase and sale arrangement whereby any electricity provided to the utility by the AEP facility is sold to the utility at the fixed or negotiated buy-back rate, and any electricity provided to the AEP facility by the utility is sold to the facility at the tariffed rate.

ITEM 7. Rescind and reserve rules **199—15.12(476)** through **199—15.16(476)**.

ITEM 8. Amend subparagraph **20.9(2)“b”(6)** as follows:

(6) Purchases of energy and capacity from ~~qualifying alternate energy production facilities and qualifying small hydro from AEP facilities, at rates required under rule 199—15.12~~ *15.11* (476).

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/03.

ARC 2615B

WORKERS’ COMPENSATION
DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers’ Compensation Commissioner hereby amends Chapter 4, “Contested Cases,” Iowa Administrative Code.

This amendment modifies requirements for filing petitions with the agency to initiate contested case proceedings seeking workers’ compensation benefits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 8, 2003, as **ARC 2223B**. This amendment was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on January 8, 2003, as **ARC 2232B**.

Written comments were solicited until January 28, 2003. Changes to rule 4.6(85,86,17A) have been made in response to public comment in order to make the rule more workable and understandable.

This amendment will become effective August 27, 2003.

This amendment is intended to implement Iowa Code sections 17A.12, 85.27, 85.45, 85.48, 86.13, 86.17, 86.18 and 86.24.

WORKERS' COMPENSATION DIVISION[876](cont'd)

The following amendment is adopted.

Amend rule 876—4.6(85,86,17A) as follows:

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A or Form 100B of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 4.1(85,85A,85B,86,87,17A). The Form 100 is to be used for all contested case proceedings except as indicated in this rule. The Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). The Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). The Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, the Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), *or a substantially equivalent form*, which shall not be revoked until conclusion of the contested case. *The claimant shall provide the patient's waivers in other forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.*

For all original notices and petitions filed on or after January 1, 2003, ~~the date (day, month and year) of occurrence of injury, disablement or occupational hearing loss shall be alleged in each original notice and petition that claims benefits for injury, occupational disease or occupational hearing loss. All alternative or additional dates of occurrence of injury, disablement or occupational hearing loss shall be alleged in the same petition if the claim or claims are alleged to have arisen from the same occurrence or series of occurrences and if (1) the correct date of occurrence is uncertain, (2) the dates are alleged to be part of a series of cumulative trauma occurrences, or (3) multiple dates of occurrence affecting the same member or part of the body are alleged. Leave to amend a petition to allege an additional or different date of occurrence, including leave to amend to conform to proof, shall be freely given when justice so requires.~~

~~An employee may join in the same original notice and petition as many related claims as the employee has against a~~

~~single employer.~~

~~Any number of employers may be joined in the same original notice and petition if the employee's claim is asserted against them jointly, severally or in the alternative and if the claim is alleged to have arisen out of the same occurrence or series of occurrences.~~

~~Joinder of related claims in a single proceeding and joinder of multiple employers in a single proceeding is not required. Failure to join all related claims or to join multiple employers in a single proceeding shall not be grounds for barring or dismissing any claim.~~

~~Claims are related if they involve common issues of law or fact and the outcome of one claim is material to the outcome of the other claim. In addition to the provisions of Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may, for administrative convenience or any good cause, order that a claim be severed and proceeded with separately or that multiple separate related claims be joined or consolidated. a separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.~~

~~Claimant shall cooperate with respondents to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.~~

~~This rule is intended to implement Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.~~

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